

“THE INDIANS MUST YIELD”:^{*} ANTEBELLUM FREE LAND, THE HOMESTEAD ACT, AND THE DISPLACEMENT OF NATIVE PEOPLES^{*}

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In the middle of the Civil War, the United States Congress passed what would become the most influential settlement law of the following decades. The Homestead Act, passed in May 1862 and in effect from January 1863, allowed citizens and future citizens to acquire parcels of undeveloped land of up to 160 acres (i.e. 64.75 hectares) free of charge after improving and living on the land for five years.¹ At least in part, the law had been passed in response to war-time concerns. But the Homestead Act had its main effect in the decades after the conflict, as millions of predominantly white homesteaders claimed land well into the 1930s, mainly in the Great Plains and Far West, but also the Deep South and Great Lakes regions.

It is not a discovery of critical historians that the Homestead Act allowed these settlers to take over the ancestral lands of Native nations. Even when the law was still under debate in the U.S. House of Representatives, longtime advocate Galusha A. Grow of Pennsylvania promised the scheme would create “great empires of free States, built on the ruins of savage life.”² During the homesteading period, state authorities did little to deny or prevent the ongoing displacement of Native peoples. Steeped in racial essentialism and the Lockean notion that property in land derived from agricultural improvement, which gave Euro-American settler-farmers a superior title, several of the states in the homesteading area incorporated the image of a Native rider giving way to a plowing settler into their seals.³ In later years, when the ideas of Manifest Destiny and, more broadly, of a hierarchical order of human races lost some of their general acceptance, the destruction of Indigenous nations was widely described as a tragic flipside of homesteading’s social promise. In a manuscript dictated after his presidency, Harry S. Truman, for example, noted that homesteading had contributed to “the real displacement of the Indian ... after the Civil War.”

^{*} I would like to thank Richard Edwards and Sara Gregg as well as editors Axel Jansen, Claudia Roesch, and Richard F. Wetzell for helpful comments on previous drafts of this article. Needless to say, all factual errors and other deficiencies are my responsibility.

1 See “An Act to Secure Homesteads to Actual Settlers on the Public Domain,” May 20, 1862, *U.S. Statutes at Large*, vol. 12, 392–393.

2 Galusha A. Grow, Speech of February 21, 1862, *Congressional Globe*, 37th Cong., 2nd sess., 910.

3 For examples of this iconography, see the state seals of Kansas, Minnesota, and North Dakota.



Figure 1. Minnesota's original state seal from 1858. In the words of a contemporary handbook, the seal "represent[ed] the encroachments of the domain of civilization upon that of the barbarians." George Henry Preble, *History of the Flag of the United States of America*, 2nd ed. (Boston, 1880), 648. In 1983, the state adopted a slightly altered design in which the Native warrior rides slightly towards the farmer, instead of fleeing straight west. Image courtesy of the Minnesota Historical Society.

Truman wrote: "That homestead business was to give former soldiers a means of livelihood so that the economy of the United States wouldn't be upset ... and it worked. But nobody seemed to give much thought to the livelihood of the Indians; the whites just casually took all their hunting grounds and all the places where they'd lived for centuries away from them. The citizens of the United States, by the way of the president, would declare an area as public land, and the whites would take it over."⁴

Far beyond the circle of professional historians there has long been a broad understanding of a connection between the violent displacement and marginalization

of Indigenous nations and the land allocation to U.S. citizens under the Homestead Act. This is not denied by any reputable historian and it is frequently referenced in popular culture. Against the background of this broad consensus, it is surprising that historians rarely go beyond the scope of individual case studies to map out how exactly Indigenous dispossession and homesteading intersected. The *how*, *where* and *when* of this relation has more commonly been assumed in the research literature than explored in any substance.⁵

In response to the renewed interest in the history of racism in the United States and encouraged by new digital possibilities for analyzing the very extensive sources left behind by land offices and settlers, a number of recent studies have explored the issue. These studies, however, come to very different conclusions. Political scientist Paul Frymer argues in a book that has been read widely among historians, that the Homestead Act should be understood in analogy to the

4 Truman went also so far as to voice understanding for the violent pushback against settlers' encroachments. "Whenever the whites infringed on one of those treaties that we made and then broke, why, the Indians would fight

back. It was a terrible thing when some family would be massacred by the Indians, but the Indians were only protecting their ownership of the property that had been taken away from them." See Harry S. Truman, *Where the Buck*

Stops: The Personal and Private Writings of Harry S. Truman (New York, 1989), 282.

5 On this point, see Richard Edwards, "The New Learning about Homesteading," *Great Plains Quarterly* 38, no. 1 (2018): 1-23, 4.

smaller free land laws of the antebellum period and thus as a method of conquest. Under these earlier laws settlers had been deliberately deployed to conquer specific areas for the U.S. government, and the Homestead Act should be understood as an extension of this scheme to the entire American West.⁶ On the other hand, historians Richard Edwards, Jacob Friefeld and Rebecca Wingo have published an equally well-received book, which posits that homesteading was a driving force of Native dispossession, but only in several specific locations during definite time periods.⁷ They argue, however, that this connection was not a general feature of the settlement practice and that, in most locations, homesteaders only claimed land long after Native nations had been forced to cede the areas to the U.S. government.

This article offers a critical appraisal of these recent interpretations and presents new evidence to make sense of the general relationship between homesteading and Native dispossession. The basis of my arguments and the theses I develop in the course of the article is, first, my book *Settlers as Conquerors* on free land laws in the antebellum period, which I published in the German Historical Institute's *Transatlantische Historische Studien* series in late 2018.⁸ In this book, I critically examined the question of a continuity between the antebellum laws and the Homestead Act, specifically with regard to their relevance for Native-settler relations. Secondly, I draw upon an extensive geographical-statistical database on homesteading that I have compiled for an ongoing web-mapping project. This database combines settlement statistics from the General Land Office's Accounting Division and maps of local land districts and Indigenous land cessions.⁹

In the first section of this article I examine the specific configurations of antebellum free land programs to explain how legislators sought to use land grants to delegate the conquest of territory to settlers. As I show, developments on the ground soon discredited the notion that settlers could act as soldiers occupying the land for the U.S. government, and for this reason the Homestead Act would not renew this experiment. In the second section I use new statistics to explore the claim that homesteaders—with some exceptions—were absent from the process of Indigenous displacement and that therefore the homesteading experience should to a large extent be separated from the process of Native land dispossession. In the third section I attempt a short empirical and conceptual sketch of the relationship

6 See Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton, 2017), 128-71.

7 See Richard Edwards, Jacob K. Friefeld, and Rebecca S. Wingo, *Homesteading the Plains: Toward a New History* (Lincoln, 2017), 91-128.

8 See Julius Wilm, *Settlers as Conquerors: Free Land Policy in Antebellum America*, *Transatlantische Historische Studien* 58 (Stuttgart, Germany, 2018).

9 I first embarked on this project in 2019-2020 as the Gerda Henkel Postdoctoral Fellow in Digital History at the German Historical Institute Washington and George Mason University's Roy Rosenzweig Center for History and New Media. The fellowship provided me with the necessary funding, peace of mind, archival access and lots of technical support to pursue this project. I am cooperating with the University of Richmond's Digital Scholarship Lab on building a web map on the social history of homesteading and Indigenous displacement between 1863 and 1912. For updates on this project, see juliuswilm.com/projects.

between Native nations, homestead settlers, and federal power in the American West during the 1860s to 1880s.¹⁰

I. “Demon of origins”: Free land in the antebellum United States

The Homestead Act was the U.S. government’s most significant free land program, enabling millions of families to gain ownership of land and establish independent farms between the 1860s and 1930s. Almost three million households claimed land under the law—and just over half of these farm households fulfilled the requirements of five years’ residency and improvements on the land in order to be issued a full property title.¹¹ While the Homestead Act was the most consequential free land program authorized by the U.S. government, it was not the first, as special laws had already provided free land to settlers on a smaller scale before the Civil War.

Some scholars see the roots of the Homestead Act in the laws of the antebellum period, which they investigate to reveal the essence of the later law. The most recent and most detailed example of this is political scientist Paul Frymer’s widely acclaimed 2017 book *Building an American Empire*, which places the Homestead Act in direct continuity with the laws of the antebellum era.¹² According to Frymer, both were “designed to move as many settlers as possible onto contested lands in order to overwhelm and dominate the preexisting population.”¹³ Frymer develops the intention and effects of the Homestead Act on Native nations from the antebellum laws, which he understands as analogous.¹⁴ As French historian Marc Bloch pointed out, however, there is a danger in focusing on beginnings as a way of understanding later iterations and developments in history. Rather than developing an understanding of things in their time, Bloch warned us that the “demon of origins” may lead us to reify things as unchanging after their entry into the world and ignore the need to explain their persistence and change.¹⁵ In the following, I will examine the laws of the pre-Civil War period and show how the Homestead Act differed significantly from them.

It is hard to select any definite point of origin for the demand that American settlers should have free access to land. In principle, the demand had always been present in the political discussions of the Early Republic. However, the proponents of the concept had to struggle against strong fiscal and economic policy reservations. The U.S. government financed itself directly through the sale of western land,

10 This article does not deal with the loss of communal reservation lands in the allotment era after 1887, when Native reservations in California, Colorado, the Dakotas, Minnesota, Oklahoma, Utah, Washington, and Wyoming were divided into private lots and the “surplus” land was offered to homesteaders. I am in the process of compiling statistics and other sources on these “homesteads on Indian lands” for a future publication.

11 See Paul W. Gates, *History of Public Land Law Development* (Washington DC, 1968), 799–801.

12 See Frymer, *Building an American Empire*, 128–71.

13 Frymer, 24.

14 See Frymer, 23–24, 152.

15 See Marc Bloch, *The Historian’s Craft* (New York, 1964), 31–32.

and in addition it paid for the service of soldiers and the construction of infrastructure and schools with land grants. A transition to a policy of free land was therefore thought to undermine an important fiscal pillar of the state. Private landowners argued similarly: large parts of private wealth consisted of property titles to land. In addition, land was often used as collateral to secure loans. Many feared that if land were to become available free of charge, a general decline in land prices would have a negative impact on the wealth of private households and their ability to incur debt.¹⁶

The advocates of free land for settlers, who since the 1820s were elected to Congress in increasing numbers from western states, sought to disarm the fiscal-economic resistance by recalibrating their demands. They developed concepts which, through their limited scope, were designed to avoid economic disruption and, in addition, to make the enabled settlements strategically useful to the government. The agrarian utopia of free land, that is, the notion that all white men could become landowners and independent farmers through their own labor, was thus combined with economic policy considerations and government ambitions to project power, with sometimes the one, sometimes the other element being predominant.

This combination is exemplified in the first public statement on the land question by Thomas Hart Benton, who, as a senator from Missouri between 1821 and 1851, was a central proponent of the policy. On October 27, 1819, Benton—still a newspaper man, but undoubtedly already preparing his political career at that time—published an editor's column entitled "United States Refuse Lands" in the *St. Louis Enquirer*:

After the public sales, when all the lands are sold, which will command more than two dollars per acre, and after the entries are made, when all are taken up that will command as much as two dollars per acre, there still remains upon the hands of the United States, lost to the public revenue, and shut up from cultivation, numerous parcels which would make desirable farms to young beginners in the world, and poor families who have not the means of paying down money for a home. Those parcels consist of all those quarter sections which contain some good land, but not enough to redeem the bad. ...

The principal cities in the United States abound with persons, who are out of employment, and being out of employ,

¹⁶ See Wilm, *Settlers as Conquerors*, 25–29.

they are by consequence without the means of paying down any thing for a small tract of land. ... To all these persons a tract of thirty, forty, or fifty acres of ground, would be a means of present support, and a foundation upon which they could build up a competent estate for themselves and their children. The wealth of the Republic, is not in the money which lies in its coffers, but in the numbers of its citizens, their attachment to their government, and their capacity to pay taxes, and bear arms for the service of their country.¹⁷

With the restriction that buyers of land should continue to have priority in the selection of parcels, Benton wanted to make his donation program compatible with the market for agricultural land and the fiscal interests of the government. He also promised that the government would gain more productive and loyal citizens by allowing the landless poor to become landowning farmers.

Already in this proposal, which may have contributed to the launching of Benton's Senate career, the social-reformist impulse of free land was modified and placed in the service of economic and political considerations. However, the concept never received recognition in the U.S. Congress in this form—despite the concept's close resemblance to earlier proclamations by founding father Thomas Jefferson.¹⁸ Benton and his allies in Congress therefore endeavored to develop designs that would make free land appear even more directly servable and indispensable for the interests of the U.S. government by helping to solve real and conjured-up crises of western expansionism.

Initially, in the 1820s, Benton tried to make it plausible that land donations in the frontier states were necessary to prevent the westernmost settlements from losing their inhabitants by their moving to the Mexican province of Texas, where free land was available for settlers.¹⁹ After the demographic collapse of the frontier obviously did not materialize and a carefully drafted bill failed in Congress in the spring of 1828, the proponents of free land shifted to a far more sinister strategy in the early 1830s: settlers on the southwestern frontier of Arkansas and Missouri were to receive land donations because the development of these settlements was absolutely necessary in order to form militias to keep the supposedly dangerous Native nations in the Indian Territory in check.²⁰ Native peoples who had been turned into refugees by the Indian Removal Act of

17 "United States refuse lands," *St. Louis Enquirer*, October 27, 1819.

18 See, for example, Thomas Jefferson to James Madison, October 28, 1785, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd, vol. 8 (Princeton, 1953), 682.

19 See Wilm, *Settlers as Conquerors*, 48–53.

20 See Wilm, 66–83.

1830 and previous acts of ethnic cleansing were branded a threat in a ten-year campaign of defamation and countless inflammatory allegations. Rather than sending the army, the rationale was that the U.S. government would save money by having settlers deal with the alleged threat, southwestern politicians and citizens' petitions claimed. Settlers would therefore not receive land as a gift, but "in consideration for perils and services to be rendered upon a national object of the first magnitude and importance," according to Senator William S. Fulton from Arkansas, who pushed a high-profile bill in the Senate during the mid-1830s.²¹

Legislators, state officials, and citizens from Arkansas and Missouri campaigned for free land in their states in the strongest imaginable terms. "The indiscriminate slaughter of the whole population of both those States might take place before the Government could be informed war had commenced," Fulton claimed on one occasion.²² This diagnosis of eminent danger, however, was not supported by military personnel stationed on the southwestern frontier. The Cherokee, Choctaw, Chickasaw, Muscogee, and other Native nations in the Indian Territory were no danger in their own right and not interested in a conflict with the U.S., according to a series of military reports to Congress.²³

In the summer of 1838, the second attempt to manufacture a national emergency, which was supposed to legitimize the granting of free land, failed with a defeat in the Senate vote. At the same time, however, the propaganda campaign defined the historically potent combination of state and settlers' interests which, in the antebellum era, gave land grants to settlers the status of a conceivable policy: settlers were to supplement and replace the army and act as agents of U.S. expansion against Indigenous nations and rival colonial powers. Moving away from the manufactured crises, Thomas Hart Benton and his Missouri Senate colleague Lewis Fields Linn now set out to promote free land as a response to existing crises of expansion—firstly, the protracted Second Seminole War in Florida and, secondly, the competition between the United States and the British Empire for control of the Oregon Country on the Pacific Coast.

Since the end of 1835, the U.S. Army had been fighting an increasingly grueling battle in Florida against the Seminole Nation, who would ultimately be driven from their homeland and resettled in the Indian Territory, today's Oklahoma. After the Seminole had initially confronted the army in some spectacular battles—on December 23,

21 William S. Fulton, Speech of June 13, 1838, *Appendix to the Congressional Globe*, 25th Cong., 2nd sess., 413.

22 *Appendix to the Congressional Globe*, 25th Cong., 3rd sess., February 26, 1839, 266.

23 See Wilm, *Settlers as Conquerors*, 77–81.

1835, for example, 108 army regulars and officers lost their lives in the so-called “Dade Massacre”—the Seminole successfully evaded the army’s approach for a long time. The Seminole hid in the vast and inaccessible landscape of the territory and only undertook guerrilla attacks on white settlements and the army. While the army could not definitely win the fight despite the deployment of large troop contingents, epidemic tropical diseases such as yellow fever and malaria led to many deaths among enlisted men and officers. In the summer of 1838, after two and a half years of war and heavy casualties, military leaders and politicians searched for a way to end operations in Florida without giving up the goal of driving out all the Seminole.²⁴

This problem was the starting point of a new free land concept: settlers endowed with land were to occupy the peninsula, pushing the Seminole to the uninhabitable swampy South. “When confined to that unwholesome and comfortless region,” Florida territorial governor Richard K. Call wrote in a strategy paper, “if they [the Seminole] are not exhausted, by disease or famine, they will be contented to emigrate from a country, which can offer them no enjoyment.”²⁵ Giving land to settlers was intended to bring the war to a radical end with the complete expulsion or annihilation of the Seminole, while saving the army from further losses and the treasury from escalating expenditures. A bill by Thomas Hart Benton from early 1839 was received positively and adopted after some political wrangling in the summer of 1842. Limited to one year and a maximum of 1250 applicants, under the Armed Occupation Act, the U.S. government for the first time gave free land to farm households that would settle on the Florida Peninsula south of present-day Gainesville for at least five years.²⁶

The area on the West Coast then known as Oregon Country, which included the Pacific Northwest of the United States and today’s Canadian province of British Columbia, offered another opportunity in the late 1830s to promote land grants to settlers as a solution to a dilemma of projecting state power. In 1818, Great Britain and the United States had concluded an agreement that granted the citizens of both countries the right to form colonies and exploit the natural resources in the area, while at the same time precluding claims to sovereignty on the part of both countries. In theory, this agreement secured U.S. interests on the Pacific Coast. But much to the dismay of American businessmen and politicians, in the course of the 1820s and early 1830s it became apparent that the British-Canadian stock corporation Hudson’s Bay Company (HBC) commanded far superior

24 See Wilm, 87–95.

25 Richard K. Call to Zachary Taylor, August 21, 1838, in *The Territory of Florida, 1834–1839*, ed. Clarence E. Carter, *The Territorial Papers of the United States*, 25 (Washington, DC, 1960), 531.

26 See Wilm, *Settlers as Conquerors*, 96–115.

resources compared to all American companies, which allowed the British Canadians to prevail over all competitors. While the attempts of American fur trading companies to gain a foothold in the Northwest failed time and again, the HBC continuously expanded its operations and soon dominated social life in the tiny colony of white fur-hunters on the Pacific Coast. Politicians in Washington feared that this economic power would, over time, translate into political influence and that the whole area would fall to British Canada. Canada would then border directly on Mexico, which at that time also included California, threatening that the United States would be completely excluded from the Pacific.²⁷

In late 1839, Lewis F. Linn introduced a proposal in the Senate that would use land donations to settlers to take possession of the Oregon Country for the United States. While a direct breach of the treaty with Great Britain—the world’s largest military power—and the stationing of U.S. troops in the Pacific Northwest were out of the question, Linn proposed to offer American settlers land parcels by law after a treaty settlement of sovereignty claims. Settlers who moved to the Pacific Northwest in anticipation of this offer would thus strengthen the U.S. position even before negotiations with Great Britain.²⁸ Linn’s proposal was not explicitly aimed at depriving Indigenous nations of their livelihoods, but it clearly implied that this would happen as a result of the settlement. In order to avoid sovereignty issues, the bill completely omitted the stage of buying-out Native land claims by treaty, which was required under the U.S. government’s regulations for territorial incorporation laid down in the Northwest Ordinance. Even though Native cession treaties were usually only concluded by means of extortion and fraud, this willingness to completely override Indigenous life interests was a departure from established precedents.²⁹

Linn’s proposal did not receive legal status until the summer of 1850 with the passage of the Donation Land Claim Act—by that time Linn had already been dead for almost seven years and the United States had gained a sovereign title to the area south of the 49th parallel by treaty four years earlier. But already in the early 1840s, the promise of free land—not legally enshrined, but advertised and repeated like a mantra by politicians of the Democratic Party—had led a stream of settlers from the Mississippi River Valley to the Pacific Northwest.³⁰

Both the Florida Armed Occupation Act of 1842 and the Oregon/Washington Donation Land Claim Act of 1850 were enacted as special

27 See Wilm, 117–24.

28 See U.S. Senate, *Motion Submitted by Mr. Linn, in Relation to the Occupation and Settlement of the Oregon Territory*, S. Doc. 25, 26th Cong., 1st sess., December 18, 1839; Wilm, 124–131.

29 See Wilm, *Settlers as Conquerors*, 128–31.

30 See Wilm, 136–40.

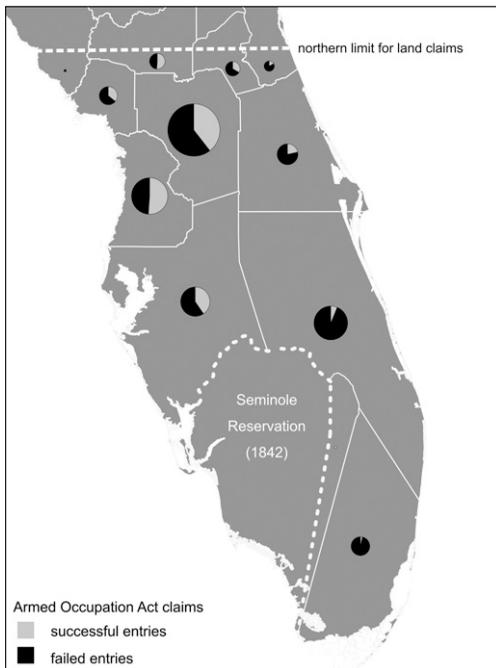


Figure 2. Map of Armed Occupation Act claims.

exceptions to the general policy that western lands should be sold and not given away. The settlers in these areas were to project and enforce American power under conditions where troops could not do so or only at very high costs. Both laws were designed so that settlers would displace Native people—as the main target in Florida and as an acceptable outcome in the Pacific Northwest.

However, from the point-of-view of politicians and the military, neither law delivered on the intended amalgamation of state and settler interests—the idea that settlers could be used as conquerors. In Florida, the tropical diseases that had already undermined the operations of the army and that were to be used as a weapon against the Seminole, turned against the settlers themselves. After a malaria epidemic in late summer 1843, many settlers fled from central Florida.

Tropical storms destroyed the small settlements that had formed around the Seminole reservation in the south. Soon, nobody believed that the few remaining settlers could exert the required pressure that would force the remaining Seminole to give up. In the winter of 1855, the U.S. government sent the army once more.³¹

In the Pacific Northwest, the presence of American settlers was successfully built up with the promise of land donations, which enabled the United States to enter into negotiations with Great Britain from a stronger position. However, the extreme violence that the settlers unleashed against Indigenous nations caused irritation in Washington, DC. In late 1855, while a federal agent was still negotiating land cessions with Oregon nations, a settler militia began a genocidal war against Indigenous communities in the southern part of the territory. After it became apparent that settler militias were no match for the Indigenous retaliation, the army was called in to help. Although humanitarian objections were also raised in public debate, the U.S. military and politicians were particularly outraged by the militias' overly reckless and self-authorized actions, which sparked a destructive war they considered unnecessary and which cost Congress millions for militia and army operations.³²

31 See Wilm, 177-80, 181-82, 190-91.

32 See Wilm, 209-12, 221-32.

The settlement experiments in Florida and the Pacific Northwest were very different. But from the point-of-view of politicians and expert witnesses called upon by Congress, both demonstrated that settlers could not easily replace soldiers. “As a measure of public policy, it has proved fallacious, and ought not be renewed,” Interior Secretary Jacob Thompson summarily noted in his *Annual Report* of 1858.³³ Consequently, this argument no longer appears in the argumentation of the proponents of land donations to settlers—who were growing in number since the 1850s. As a result, the new homestead bills abandoned the argument that settlers should act as agents of the state. Therefore, disputed lands that had not been conclusively wrested from their prior Indigenous owners—such as those invaded by land claimants in Florida and the Pacific Northwest—were not to be made available for settlement.³⁴

Homestead proponents countered fiscal and economic objections to land donations with economic and socio-political arguments in a narrower sense: free land would increase the number of taxpayers and accelerate the development of the frontier. While the supporters of land grants in the 1830s and 1840s had engaged in a particularly vociferous racism against Natives, since this enemy image construction was central to their legitimization, Indigenous nations no longer played a prominent role in the promotion of a general homestead law.³⁵

During the 1850s, the homestead movement gained unprecedented popularity. At the same time, however, its demands only found the ear of a political majority in Washington in 1862, after the onset of the Civil War. Now a decisive element in the debate was the idea that land grants would strengthen frontier settlers’ “attachment to their government,” which Benton had already mentioned in 1819. The introduction of a national tax system in the course of the war mobilization also removed a weighty objection to land donations in the West.³⁶

Although the antebellum laws may be regarded as the predecessors of the Homestead Act, their use of settlers in strategies of conquering territory differed greatly. In the minds of lawmakers and federal bureaucrats, the antebellum laws had demonstrated that land claimants could not be expected to act as agents of American state power. Instead of selectively providing land donations in contested areas, as the antebellum laws had done, the Homestead Act made public land generally available for free. Homesteaders were specifically not allowed to make claims on territories for which the U.S. government still recognized a valid Native title.

33 Jacob Thompson, Report of the Secretary of the Interior, December 2, 1858, in U.S. Senate, *Message of the President of the United States to the Two Houses of Congress*, December 6, 1858, 35th Cong., 2nd sess., S. Exec. Doc. 1, pt. 1, 73.

34 See Wilm, 234–238.

35 See Wilm, 238–246.

36 See Wilm, 246–50.

II. Statistics and definitions: Comparing the timing of Indigenous dispossession and homesteading

Unlike previous free land laws, the Homestead Act of 1862 was not *designed* to make settlers conquer Native land. But even if this legislative, strictly intentional connection does not exist, there is the question of how the Act affected Indigenous nations on a more implicit and structural level than an explicit call for conquest.

Richard Edwards, Jacob Friefeld and Rebecca Wingo have made a data-based contribution on this topic in the fifth chapter of their critically acclaimed book *Homesteading the Plains*, published in 2017.³⁷ The authors compare the timing of Indigenous land cessions to the U.S. government with the timing of homestead claims in different states in order to investigate a possible connection. They argue that a close temporal connection would suggest that land cessions were effected by the government due to pressure from potential homestead settlers, while a longer time interval between land cessions and homestead claims would make a direct connection implausible.

Based on their statistical analysis, Edwards, Friefeld and Wingo distinguish three ideal-typical development paths. In the Nebraska pattern, which can also be found in California, Kansas and Minnesota, the displacement of Indigenous nations preceded the settlement by homesteaders by decades. The Homestead Act thus regulated the distribution of land long after the previous inhabitants had lost their homes. Homesteaders were not involved in the process of Indigenous displacement in these states.

A second pattern was the development in Colorado, which was also found in Montana, northwestern Nebraska, New Mexico and Wyoming. In these states, Indigenous nations were forced from their lands when the Homestead Act was already in operation. However, homesteaders only began to take an interest in land grants in these states many years after the Indigenous inhabitants had been confined to reservations. A connection between the expulsion of the Native nations and homesteading is unlikely in these areas, as well.

The authors identify a third pattern in the Dakotas, which can also be observed in the Indian Territory, now Oklahoma. Here, homesteading and the loss of Indigenous lands occurred simultaneously, and the displacement was largely due to the interest of homestead settlers in the areas. A close connection between homesteading

³⁷ See Edwards, Friefeld, and Wingo, *Homesteading the Plains*, 91-128.

and the displacement of Indigenous nations was thus only found in three of eleven states studied—North and South Dakota and Oklahoma.

The analysis of Edwards, Friedfeld, and Wingo is groundbreaking in that it is the first comprehensive attempt to explore the connection between the taking of Indigenous land and homesteading using statistics and geographic data. This makes their publication stand out from all previous studies and it challenges assumptions that over decades had been solidified into unexamined truths of historical scholarship.³⁸ Statistically and conceptually, however, the source material of their study has some limitations.

The three authors take the homestead claims statistics in the individual states from a brochure published by the U.S. Bureau of Land Management (BLM) in 1962.³⁹ But this brochure only lists annual figures for final claims, i.e. the number of settlers who had lived on their parcel of land for at least five years and were therefore issued a full land title. However, in order to assess the temporal relationship between homestead settlements and Indigenous land cessions, it is necessary to count original claims made at least five to seven years earlier, which were more numerous than the claims that were later converted into full land titles.⁴⁰

Another problem with the figures listed in the brochure is that the settlement data gives fiscal years instead of calendar years, without indicating this.⁴¹ At the time, fiscal years began on July 1 of the previous calendar year. This inaccuracy makes the settlers appear yet another half year late in the statistical compilation of homesteading and land cessions, in addition to the five to seven years between original and final claims.

Finally, it should be noted that for the years 1863 to 1905 the BLM's compilation only counts as "homesteads" land titles that settlers acquired by living and working on their land for five years. For the later years, however, the BLM additionally counts so-called "commutations" under "final homesteads." Commutations are claims originally registered as homesteads that settlers converted into full property titles by buying the land from the government before the end of the regular five-year settlement period. For the years up to 1905 these purchases were counted in a separate category. The inconsistent counting method results in a relative inflation of post-1905 homesteads. The settlements in the 1860s and 1870s that took place immediately after

38 The book has received much praise from reviewers. See, for example, Mark M. Carroll, "Homesteading the Plains: Toward a New History. By Richard Edwards, Jacob K. Friefeld, and Rebecca S. Wingo," *Western Historical Quarterly* 49, no. 3 (2018): 360–61, <https://doi.org/10.1093/whq/why062>; Walter L. Buenger, "Homesteading the Plains: Toward a New History," *Journal of American History* 105, no. 3 (2018): 670–71, <https://doi.org/10.1093/jahist/jay322>; Julius Wilm, "Landaneignung Und Siedlerkolonialismus," *H-Soz-Kult*, September 4, 2018, www.hsozkult.de/publicationreview/id/rezbuecher-29178.

39 See *Homesteads* (Washington DC, 1962).

40 The authors point out the problem in using final instead of original claims in a footnote, but they do not adjust for this in their analysis. See Edwards, Friefeld, and Wingo, *Homesteading the Plains*, 229, fn 2.

41 That the figures are indeed for fiscal instead of calendar years can be seen by comparing them to the figures given in the annual reports of the U.S. General Land Office. The figures are identical, but the annual reports state explicitly that they cover fiscal years.

Indigenous land cessions appear relatively smaller when compared to these inflated figures.⁴²

It is true, as Richard Edwards points out in an article, that homesteading statistics compiled by the land offices in the nineteenth century remain imperfect.⁴³ But the records of the U.S. General Land Office's (GLO) Accounting Division at the National Archives do provide far more accurate statistics than those published in different statistical compilations.⁴⁴ The books were likely kept with great care, as local land officials passed on fees to the GLO that homesteaders payed when filing and completing claims and local officials received commissions for these filings. Because of the significance of this fee-based system, accounting errors would not only have skewed official statistics, but directly impacted the GLO's revenue and land officers' compensation. While I have found a few minor mistakes, overall the statistical ledgers kept by the GLO appear to give quite precise figures of the homesteads filed, completed, and commuted under different statutes during each fiscal year between 1863 and 1912. These records also have the advantage that they provide information on local land office districts instead of aggregated state data.⁴⁵

If one combines the Accounting Division's state-level statistics for fiscal years 1863-1912 and figures published in the GLO's annual reports for fiscal years 1913-1935 on *original homesteads* (instead of the figures on *final homesteads* from the BLM's 1962 brochure) with graphs of Indigenous land cessions in the different states, a substantially different picture emerges.⁴⁶ In particular, the clear temporal gap between land cessions and homestead claims that was thought to define the Nebraska and Colorado patterns disappears. Instead, an overlap of homesteading and Indigenous displacement emerges in all of the states that were chosen by the three authors to represent ideal-typical developments. To illustrate the difference between the data sources, I have also included the BLM's 1962 data of finished claims in Figures 3-6.

As Figures 3 and 4 show, Nebraska in the 1860s and Colorado in the 1870s saw major spikes in original homestead claims while larger portions of the state still remained in Indigenous hands. Far from suggesting a clear separation between the processes of Native dispossession and homesteading, the graphs indicate a period of overlap if not entanglement. At first glance, the development in Montana (Figure 5) does not seem to correspond to this pattern, as the great run for homesteads only began in the 1900s, after the Native nations had been confined to small reservations. But does this truly disen-

42 One source of the inconsistent way of counting could be that the BLM's compilers used statistics from the 1905 Public Lands Commission Report for the earlier years (which excluded commutations), which they then unknowingly supplemented with inconsistent data for the later years (by including commutations). See U.S. Public Lands Commission, *Report of the Public Lands Commission with Appendix*, 58th Cong., 3rd sess., 1905, S. Doc. 189, 175-179.

43 On the point, see Richard Edwards, "Why the Homesteading Data Are So Poor (And What Can Be Done About It)," *Great Plains Quarterly* 28, no. 3 (2008): 181-90.

44 U.S. General Land Office. Accounting Division, "Records of Disposal of Public Lands under the Homestead Laws, 1863-1912" (1912), RG 49, UD 788, National Archives I, Washington, DC.

45 This allows for an even more precise view of local dynamics that I will explore in a forthcoming web map. See fn 52 below.

46 I have extracted the acreage remaining in Native ownership from the respective graphs in Edwards, Friefeld, and Wingo, *Homesteading the Plains*, 97, 104, 108, 112.

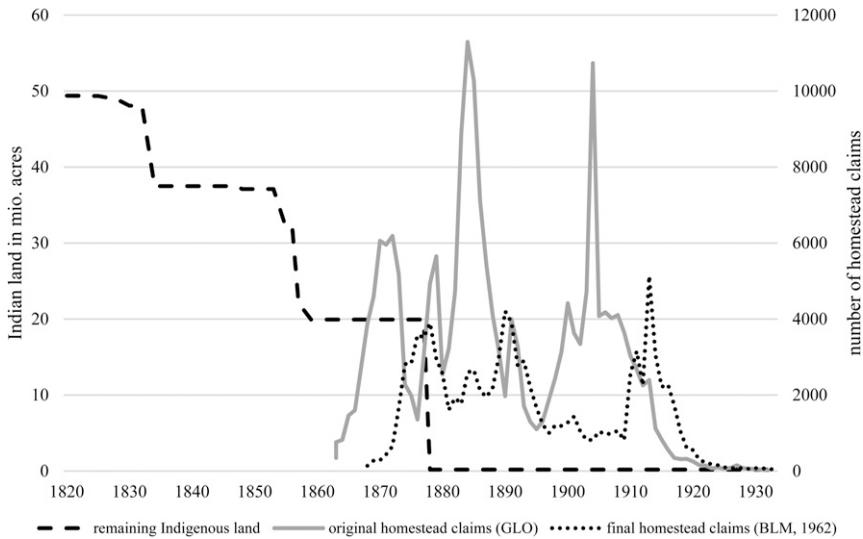


Figure 3. Indigenous land and homestead claims in Nebraska.

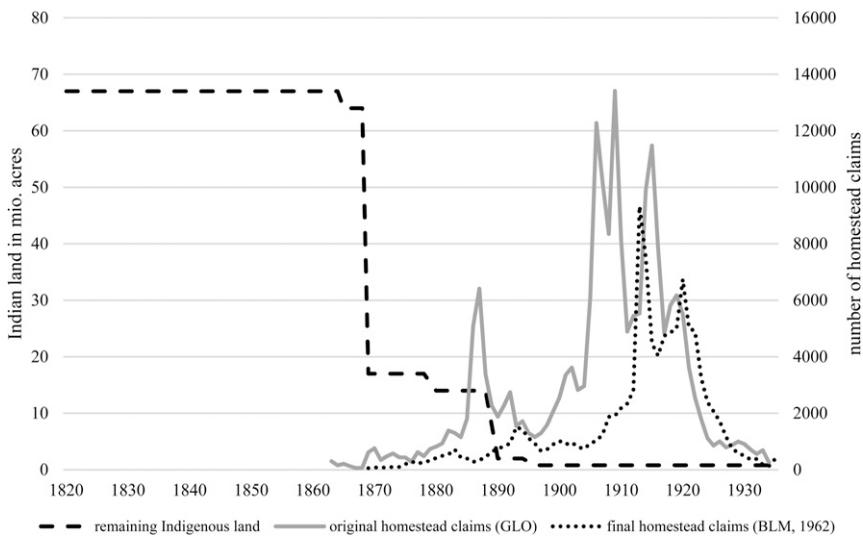


Figure 4. Indigenous land and homestead claims in Colorado.

tangle homesteading from the story of Indigenous displacement? Even though much larger groups of homesteaders arrived in later years, some already claimed land from 1868 onwards. Until 1874, the year of a major land cession, 903 settler households had filed original homestead claims in Montana. While the *majority of Montana homesteaders* arrived long after the confinements of the state’s Native population to reservations, the *existence of the settlement practice* may

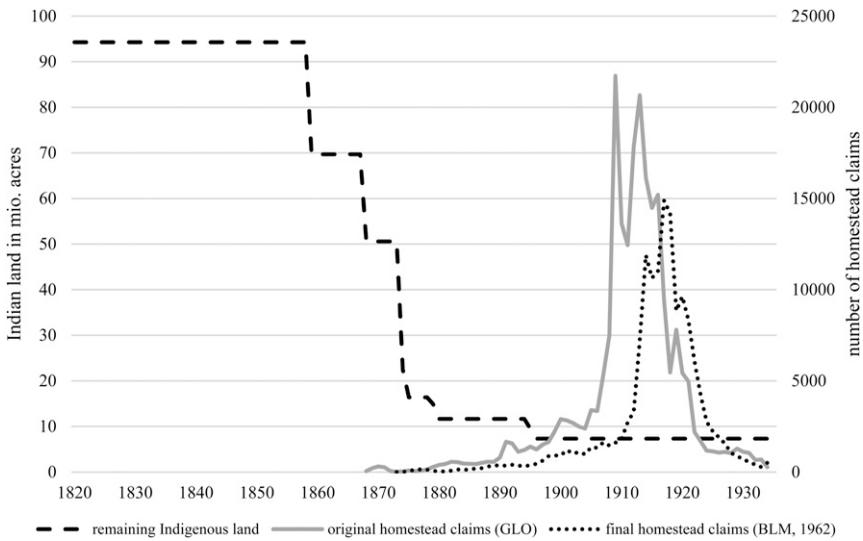


Figure 5. Indigenous land and homestead claims in Montana.

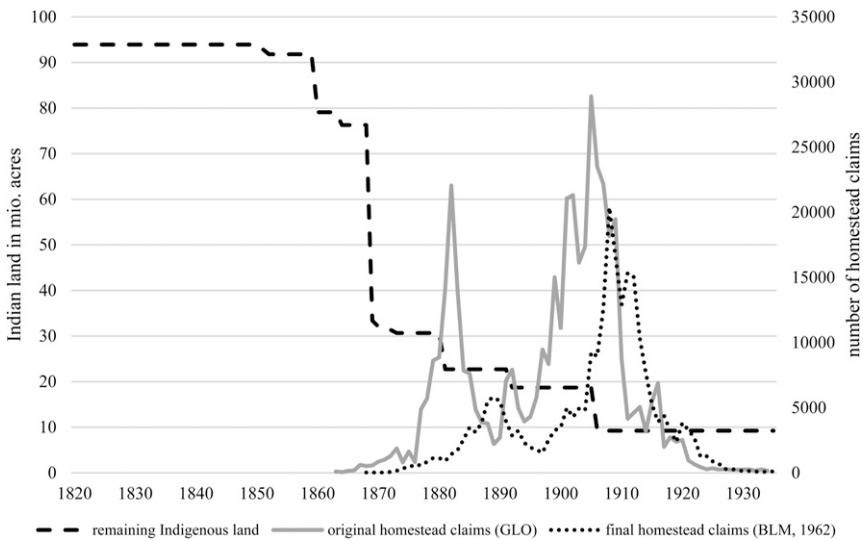


Figure 6. Indigenous land and homestead claims in the Dakotas.

well have played a role in the process of displacement during the late 1860s and the 1870s. As I will show in the next section of this article, Indian Affairs and Army officials generally saw the *sheer existence* of homestead and other white settlements in the proximity of Native territory as a reason to push for Indigenous removal, rather than the absolute or relative size of these settlements.

Figure 6 on the Dakotas confirms that the timing of the taking of Native lands and homesteading intersected; the overlap was even more significant than the figures from the BLM brochure suggests. As a result of the large proportion of commuted claims in the Dakotas, the inconsistency of the BLM's pre- and post-1905 figures is especially apparent in this graph. While there was a major rush for homesteads in fiscal year 1883, many claimants did not secure a final title by living on their claim for five years, so this demographic surge is reduced to a more modest bump in final claims that appears around 1889 in the BLM figures. The figures of final claims in the 1900s (which included commuted claims from 1906 onwards) appear much larger. The BLM's inconsistent count thus skews the graph to make the later years appear more central to the homesteading story than they actually were.

The corrected data compilation of settlement applications and Indigenous land cessions in Figures 3-6 thus indicates that the processes of displacement and settlement followed each other closely. Beyond that, it is worth asking: to what extent are the dates of land cessions useful to show when Native nations definitively left an area? As Edwards, Friedfeld and Wingo point out, cession treaties were not freely made agreements between equal parties.⁴⁷ These agreements were made using a broad register of extortion and fraud and often lacked the consent of key Indigenous groups and actors. From 1871, the U.S. government went so far as to decide by presidential executive order on the transfer of Indigenous lands.⁴⁸ The date of a "land cession" therefore only reflects when a forced treaty or even a unilateral U.S. government decision went into effect. By contrast, the data does not reveal whether Native communities continued to live in officially "ceded" areas after this date because they either did not know about concluded agreements or did not want to participate in them. The struggle for control of the land was therefore messier—and lasted longer—than the chronology of Indigenous land cessions suggests. In the era of homesteading, the U.S. Army repeatedly waged wars against so-called "nontreaty Indians" who continued to live and hunt in so-called "ceded" territories.⁴⁹

It can be argued, therefore, that looking only at the timing of land cessions and homestead applications, reproduces the view of the U.S. government, which wanted to define a definitive end to Indigenous claims with forced treaties. For historians, this raises the question of what the alternatives are for assessing the temporal relationship between homesteading and the displacement of Native nations.

47 See Edwards, Friedfeld, and Wingo, 91-92.

48 See Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA, 2007), 252.

49 For examples, see Gary C. Anderson, *Ethnic Cleansing and the Indian: The Crime That Should Haunt America* (Norman, 2014), 259, 262.

A comprehensive study on the presence of Native peoples on the homesteading frontier (which would have to consider oral histories from an Indigenous perspective as well as reports and diaries of settlers and soldiers) remains to be written. On the basis of a dataset by political scientist Jeffrey A. Friedman on armed frontier conflicts, however, it can be shown that Native nations continued to fight the U.S. Army and settlers in areas for which, under U.S. laws in force at the time, Indigenous claims no longer existed.⁵⁰ According to Friedman's computation for Nebraska, soldiers and settlers fought against Cheyenne, Lakota, and Nakota well into the late 1870s. Between 1863 and 1879, these conflicts left an estimated 248 Natives and 236 white people dead. In Colorado, armed conflict with the Apache, Arapaho, Cheyenne, Kiowa, Lakota, and Ute only ended in 1887, with 248 Native and 145 white casualties falling into the homesteading years. Clashes of white people in Montana with Arapaho, Bannock, Blackfeet, Cheyenne, Crow, Lakota, Nez Perce, and Paiute continued until 1890, leaving a recorded 733 Native persons and 393 white people dead after 1863. In the Dakotas, fights with the Lakota and Santee Sioux continued until the notorious massacre at Wounded Knee in late December 1890, with a recorded 760 Natives and 151 white people being killed from the onset of homesteading in the territory.⁵¹

50 Jeffrey A. Friedman, "Using Power Laws to Estimate Conflict Size," *Journal of Conflict Resolution* 59, no. 7 (2015): 1216–41, <https://doi.org/10.1177/0022002714530430>. The dataset is available in the journal's online repository at Sage.

51 These figures most likely undercount Native casualties. Friedman's figures are directly and indirectly based on tabulations by the army, which did not keep accurate records of Indigenous deaths. On this point, see Joseph P. Peters, *Indian Battles and Skirmishes on the American Frontier, 1790–1898* (Ann Arbor, 1966), 23.

52 I hope to contribute to this with a web map that I am currently working on with University of Richmond's Digital Scholarship Lab. The map will visualize more granular homesteading statistics by local land office districts for the 1863 to 1912 period in combination with Indigenous land cessions and a host of other data and events that elucidate the diverse dynamics on the ground. For updates on this project, see julius-wilm.com/projects.

Although the Homestead Act did not provide for settlers to be used for military service, and although settlers could not take possession of Indigenous lands without the U.S. government first purchasing the lands from their Indigenous owners, a critical review of the GLO Accounting Division's state-level statistics shows that significant numbers of homesteaders still settled in the wider proximity of areas where the forcible expulsion of Indigenous people was not yet completed. Looking at all applicants for the Homestead Act, only a small proportion of the settlers may have staked claims in these contested areas. But it seems more than justified to consider the Homestead Act as an integral part of the violent conquest and transfer of Indigenous lands to white Euro-Americans. As I have demonstrated here, homesteaders took possession of land soon after the displacement of Indigenous owners, who were at times still fighting to maintain their residence. A more comprehensive and granular analysis of homesteading in different states and territories will reveal nuances.⁵² But the GLO's state-level data does not support the ideal-typical distinction made in *Homesteading the Plains* between patterns in the timing of homesteading and Indigenous displacement Nebraska,

Colorado/Montana, and Dakota/Oklahoma, in which only the last pattern featured a significant overlap.

III. “The country needed by the whites”: Homesteaders, Native nations, and federal power

What did it mean when the timing of homesteading and the displacement of Native nations overlapped? The antebellum free land laws had been explicitly premised on the idea that settlers would conquer territory. This had been the central selling point that helped win congressional approval for the Florida Armed Occupation Act in 1842 and the Oregon/Washington Donation Land Claim Act in 1850, but the results of both laws led free land advocates to drop the idea of delegating the conquest of territory from their pitch. Did the entanglement of homesteading with Indigenous dispossession mark an unacknowledged and unintended return to the antebellum model? A close reading of federal planning documents reveals a take on homesteading that differed significantly from the antebellum approach. Homesteading contributed to the process of Indigenous displacement and to the diminishment of Native lands, but in a way that was quite different from the antebellum laws.

Unlike the antebellum era, it was an important point in virtually all planning documents during the late 1860s that settlers and Natives should be kept apart. General John Pope, the commander of the Military Division of the Missouri, warned, “the security neither of white nor Indians is longer compatible” with white settlers pressing into Indigenous territory.⁵³ Nathaniel G. Taylor, the Indian commissioner, advised that Native peoples “are in the way of our toiling and enterprising population, and unprotected they will soon be inevitably submerged and buried beneath its confluent surges.”⁵⁴ It was paramount “to keep the Indians as much as possible from mingling or coming in contact with the whites,” special Indian commissioner John B. Sanborn argued.⁵⁵ While the free land strategists of the 1830s and 1840s had sold their concepts on the idea that settlers would conquer territory from Native peoples and the rival colonial power of Great Britain, military and Indian affairs officials of the post-Civil War era sought to prevent direct contact between settlers and Indigenous people.

Although planning documents, especially those authored by Indian affairs officials, at times included humanitarian arguments for keeping settlers and Natives apart, the consideration was predominantly

53 John Pope to William T. Sherman, August 11, 1866, in H. Exec. Doc. 1, pt. 3, 39th Cong., 2nd sess., 27.

54 Nathaniel G. Taylor to William T. Otto, July 12, 1867, in S. Exec. Doc. 13, 40th Cong., 1st sess., 4.

55 John B. Sanborn to Orville H. Browning, July 7, 1867, in S. Exec. Doc. 13, 40th Cong., 1st sess., 69.

one of colonial strategy. Officials took for granted that the entire West would be settled by U.S. citizens, so the western Native nations had to be cleared out and removed from their homelands to reservations. Military officials and reform-minded Indian affairs officials disagreed about how best to accomplish this removal—through the expedient use of violent force or patient negotiations.⁵⁶ They agreed, however, that clashes between settlers and Native peoples were counterproductive.

Homesteaders and other frontier whites, therefore, no longer played the role of conquerors in the planning of officials. Instead, they were considered part of the entitled coalition of white interests for which the various departments of state power were facilitating the takeover of the frontier against the resistance of Native peoples. According to the understanding of these officials, the West should be proactively conquered and then made available to the white citizens and future citizens of the United States.

Official reports, however, frequently complained about white miners and settlers moving into frontier areas that had not yet been pacified and incorporated. Thus, in February 1867, Indian Commissioner Lewis V. Bogy described a “sudden overflowing of the whites throughout the Indian country, caused by the discovery of gold and silver and the rapid settlement of all the western Territories” that created “great trouble.”⁵⁷ Likewise, the new commander of the Military Division of the Missouri, General William T. Sherman, complained in October 1867, “public lands have been surveyed and sold, railroads and stage roads located, and telegraph lines, with their necessary offices and stations, established in a country where the Indian title is clearly recognized” in Kansas and Nebraska, and the Territories of Dakota, Montana, Colorado, and New Mexico. “All parties interested turn to the military, the only visible national authority, to give force and effect to their titles or to their rights.”⁵⁸ With the exceptions of Montana and New Mexico, homesteaders had registered claims in all of the mentioned locations at the time of this complaint.

Sherman’s report of the following year renewed the complaint about western miners and settlers. The report called for greater coordination of the General Land Office and other government departments with the army, as the surveying of land and the “grant[ing] of patents to occupants” (homesteading) along with the construction of roads and telegraphs created conflicts throughout the West. “Over all these matters the military authorities have no control, yet their public nature implies public protection, and we are daily and hourly

56 While Indian Commissioner Lewis V. Bogy described more generous reservations as the method for taking over “the country needed by the whites”, General William T. Sherman pitched expansive military operations to win western territory “for our people exclusively.” Lewis V. Bogy to Orville H. Browning, January 23, 1867, in S. Exec. Doc. 13, 40th Cong., 1st sess., 20, William T. Sherman to George K. Leet, October 1, 1867, in H. Exec. Doc. 1, pt. 3, 39th Cong., 2nd sess., 21.

57 Lewis V. Bogy to O.H. Browning, February 11, 1867, in S. Exec. Doc. 13 40th Cong., 1st sess., 39.

58 Sherman to George K. Leet, October 1, 1867, in H. Exec. Doc. 1, pt. 3, 39th Cong., 2nd sess., 21.

called on for guards and escorts, and are left in the breach to catch all the kicks and cuffs of a war of races, without the privilege of advising or being consulted beforehand.”⁵⁹

Sherman did not attempt to weigh the extent to which the intruders throughout the West were made up of miners and other groups rather than farmer-settlers interested in filing homestead claims. Given the dependence of farmers on access to markets and transportation, it seems plausible that homesteaders would have been more inclined to stay near established settlements than itinerant miners, who were interested in quickly extracting precious metals and then leaving.⁶⁰ But Sherman clearly saw homesteading settlers as a part of the group that ventured far too close to Native territory. Given that state statistics show a broad temporal overlap between homesteading and Indigenous displacement, this observation was likely accurate. While Sherman was annoyed by frontier whites outrunning his efforts to force Native peoples onto reservations, to him it only underlined that the process of dispossession needed to be hastened. The 1868 report concluded:

It is idle for us longer to attempt to occupy the plains in common with these Indians [Arapaho, Cheyenne, Comanche, Kiowa, and Lakota], for the country is not susceptible of close settlement with farms like Missouri and Iowa, and is solely adapted to grazing. All of our people there are necessarily scattered, and have more or less cattle and horses, which tempt the Indian, hungry, and it may be starving for



Figure 7. Frederic Remington's undated painting "Battle of War Bonnet Creek." In this painting, Remington gives a disturbing rendition of the U.S. Army's last massacre of Native people in Nebraska. In late 1878, a group of Northern Cheyenne fled the brutal conditions in their assigned reservation in today's Oklahoma, crossing through Kansas and much of Nebraska to seek homes in Dakota Territory and Montana. After a group escaped their captors at Fort Robinson in late January 1879, army troops went after the Cheyenne and killed all Natives they could find. Image courtesy of the Gilcrease Museum.

59 William T. Sherman, Annual Report, November 1, 1868, in H. Exec. Doc. 1, pt., 3, 40th Cong., 3rd sess., 1.

60 This would correspond to patterns seen among claimants under the antebellum free land laws, who clearly preferred parcels in areas that made

market access easy, rather than more remote regions that were closer to unconquered Native groups. See Wilm, *Settlers as Conquerors*, 168, 198.

want of his accustomed game; and he will steal rather than starve, and to steal he will not hesitate to kill. A joint occupation of that district of country by these two classes of people, with such opposing interests, is a simple impossibility, and the Indians must yield.⁶¹

Indian affairs officials only disagreed regarding the methods of affecting the removal, but not on the fundamental premise.⁶² In the view of officials, the move of frontier whites into the proximity of contested territory—be they homesteaders or parties interested in other pursuits—necessitated the removal of Indigenous nations. Homesteaders were not purposefully sent into disputed territories like their antebellum predecessors. But the policy to prevent the comingling of Indigenous people and whites likely made the moves of even small groups of homesteaders into the proximity of Native nations into drivers of dispossession.

Conclusion

A close look at the Homestead Act and the antebellum free land laws reveals significant differences. The free land programs of the 1840s and 1850s for Florida and the Pacific Northwest were specifically designed to delegate the expansive enforcement of American sovereignty to settlers. Even before the Civil War era's general push towards centralizing government power, the disappointing result of both laws raised strong concerns among policy makers about leaving the conquest of territory to settlers. Therefore, the Homestead Act did not renew the antebellum experiment. Instead, both the army and Indian affairs officials sought to prevent direct clashes between white settlers and Native nations.

At the same time, however, the statistical analysis of the timing of original homestead claims and forced Indigenous land cessions in Nebraska, Colorado, Montana, and Dakota demonstrates that homesteaders were seeking out parcels in states when Native nations were still fighting to hold onto their homelands. And precisely because the army did not want to allow a repetition of the situation in Oregon in the mid-1850s, where settlers encroaching on Indigenous land triggered an uncontrollable escalation of violence, the homesteaders who sought out land close to Native nations became, yet again, a driving force of dispossession. In order to remain in control of the situation, the government hastened its efforts to force the Native peoples out of the way and onto reservations.

61 William T. Sherman, Annual Report, November 1, 1868, in H. Exec. Doc. 1, pt. 3, 40th Cong., 3rd sess., 5.

62 See Bogy to Browning, February 11, 1867, in S. Exec. Doc. 13, 40th Cong., 1st sess., 39.

The relationship between homestead settlements, military campaigns, and Native land dispossession in the American West during the late nineteenth century is in need of further temporal-spatial research and a larger qualitative study. But the broad overlap of homesteading and dispossession suggests that homesteading played a significant role in the taking of Indigenous lands in the Great Plains and Far West regions.⁶³ This history differs not only normatively from the representation in the seals of some Great Plains states, in which a white farmer seems to displace the Indigenous inhabitant all by himself. The American state was a central actor in this history. Settlers could not conquer territory on their own, as the experiments from the antebellum period showed. But as white U.S. citizens and future citizens, homesteaders were in a position to mobilize the government on their behalf. The one-sidedness of this state intervention is one of the enduring tragedies of homesteading that possesses an eerie topicality.

⁶³ For newer iterations of this argument see, for example, Nick Estes, *Our History Is the Future: Standing Rock Versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance* (London, UK, 2019), 28; Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (Boston, 2015), 140–41.

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