Julius Wilm

Settlers as Conquerors

Free Land Policy in Antebellum America

History

Franz Steiner Verlag

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Julius Wilm
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1 – Introduction

The Politics of Free Land in the Early United States

From the nature and purpose of civil institutions, all the lands […] are assumed by that society, and subject to their allotment only. This may be done by themselves, assembled collectively, or by their legislature, to whom they may have delegated sovereign authority; and if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.[1]
– Thomas Jefferson, July 1774 –

… the greatest part of the United States have been Settled […] by Proclamation being Set foarth that all Such as Would Venter into the Wilderness and make Improvements and Would become Actual Settlers […] Should be Inttled to a Certain Quantity of land[.] & Now When the American by a long and Tidious War has Gained to themselves Liberty at the Expence of Much Blood & treasur and Can Now bost they have the most free Govermet in the known World, We may Reasonably Expect that We Will have as good times Now Under Governors of our Own Choosen as We had When Under the British Goverment (or that Can be had by all Such as Will move over either to British or Spanish Goverments at this time)… [sic][2]
– Inhabitants of Jefferson County, Northwest Territory, 1799 –

The remarkable appeal that the United States had to Europeans during the late eighteenth and nineteenth centuries has often been attributed not only to the country's democratic culture, but also to the presumably existing opportunities for upward mobility. At the time, many saw the basis for these possibilities primarily in the easy access to undeveloped land, which, it was thought, would enable broad sections of the population to set up farms and thus to improve their economic situation through personal skill and hard work.[3]

1 Thomas Jefferson, "A Summary View of the Rights of British America," July 1774, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd, vol. 1 (Princeton, 1950), 133.
2 Inhabitants of Jefferson County, Petition to Congress, 1799, in *The Territory Northwest of the River Ohio, 1787–1803*, ed. Clarence E. Carter, The Territorial Papers of the United States, vol. 3 (Washington, DC, 1934), 54.
3 While similar points were made by J. Hector St. John de Crèvecœur in 1782 and Alexis de Tocqueville in 1835, the most well-known formulation of the idea is doubtlessly Frederick Jackson Turner's 1893 address to the American Historical Association. See J. Hector St. John Creve-

In the early US, however, access to uncultivated land was restricted. While Patriot leaders like Thomas Jefferson protested against British rule during the American Revolution by pointing to the restraints that the Crown placed on colonists who wanted to claim undeveloped lands, the federal government that went into operation in 1789 was even more restrictive than its colonial predecessors. There were both fiscal and economic reasons for this. The new US government used the proceeds from land sales to finance itself, and in the fledgling commercial society of the early republic a large part of the private wealth consisted of property titles to agricultural land. It was feared that if land was made available for free, this would diminish or even obliterate the land wealth of private citizens and the government. During the 1790s to 1850s, most politicians dismissed popular demands for free land to settlers as an unrealistic and unworkable policy.

Poor whites occupied a complicated position in the colonial hierarchy of the early republic.[4] African Americans were excluded from participating in many aspects of social life as nominally free people in the North and held in bondage in the South, and Native Americans were viewed as external to society and therefore willfully dislocated or killed as the United States expanded westwards. On account of their European ethnicity, poor whites – the heterogeneous group so described by observers at the time – were in principle seen as qualified and entitled members of the settler community. The promise of

coeur, *Letters from an American Farmer*, ed. William P. Trent (New York, 1904), 78–79, 89–90; Alexis de Tocqueville, *Democracy in America*, ed. Harvey C. Mansfield and Delba Winthrop (Chicago, 2000), 269–270; Frederick Jackson Turner, *The Frontier in American History* (New York, 1920), 1–38.

4 "Poor whites" and synonymous terms are used throughout this book to refer to the European American lower class in the socio-economic sense. These were people who had few economic means, but were regarded as a part of settler society and could, therefore, unlike colonized populations, claim certain legal and political rights. Being poor and white in the early United States was hardly a homogeneous experience. Women and men possessed vastly different degrees of freedom, as gendered family ideals and divisions of labor vested authority in males in principal. Rural and urban experiences differed greatly, and regional and ethnic differences may equally have shaped the lives and outlooks of people collectively classified by social statistics and observers at the time as "poor." The term "poor whites" is used despite its generality to evaluate a central idea of "free land" proponents, namely, whether land grants allowed lower-class European American households to improve their socio-economic situation by setting up independent farms. In contrast to Nancy Isenberg's recent and much-discussed history of the concept of "white trash," the term "poor whites" did not express contempt for the lower class in political discourse. The term "poor" was common as a self-description during the nineteenth century and meant, quite simply, having little wealth and low income. This book is not a contribution to the debate (most recently reignited by J. D. Vance) on how a lack of social capital and certain behaviors can shape a 'culture of poverty' that keeps people from changing their situation even when opportunities are supposedly available. The analysis in this book asks whether land donation laws created such opportunities at all. See Nancy Isenberg, *White Trash: The 400-Year Untold History of Class in America* (New York, 2016); J. D. Vance, *Hillbilly Elegy: A Memoir of a Family and Culture in Crisis* (New York, 2016).

the *Declaration of Independence,* that the new government would rely on the "consent of the governed," was meant to apply to them. Unlike colonized peoples, non-land-owning European Americans were acknowledged as bearers of rights and the simple white family farm household (under the authority of males and occasionally widows) was seen as the nucleus of the "American people," to which the US government referred as its highest purpose and reason of existence. In principle, the new government saw it as its duty to also serve the interests of its less well-off citizens – even before voting rights became available to white men without property. However, their new status as citizens rather than colonial subjects did not give poor white people free access to land. Indeed, even after the 1820s, when most states had extended suffrage to all white males, land policy was still less lenient toward the interests of the landless than before the Revolution. The neighboring British and Spanish colonies had not made the switch to democracy, but the authorities in these places made free land available to farmers who were willing to join them. Elected US politicians, meanwhile, generally refused to even consider the idea and pointed to the role of land as a private economic asset and means of government financing.

Despite the political rejection of free land in early America, the concept remained attractive, and demands resurfaced periodically. Many lower-class whites put great hope in the concept, which they thought would allow them to become independent landowners and generally create the basis for a more equitable social compact. The question was, however, how could the demand possibly navigate around the objections raised against it?

The propositions that legislators found credible enough to review between the 1790s and the 1850s presented land grants to white settlers as an innovative governmental tool and cost-effective method of conquest. Free land was to Americanize frontiers by settling them with a reliable population and thereby consolidating, creating, and expanding the racial order of established US society across the continent. The focus on making 'realistic' demands conducive to state building transformed free land into a more sinister project than a selectively inclusive land policy would have. Not only were non-whites excluded from becoming landowners. The proposals had the explicit goal of worsening the situation of both Indians and African Americans. Entitled settlers were imagined to be cost-effective agents of US sovereignty who would displace Native peoples and expand the southern system of slavery. The pressure to formulate demands compatible with the fiscal base of the US government thus created a direct association between land entitlements for disadvantaged European Americans and the dispossession and exclusion of non-white populations.

Most of the projects that Congress discussed through the 1850s failed before a bill was passed by either the House or the Senate. In 1842, 1850, and 1854, however, federal legislators were convinced enough of the merits of free land to agree to special laws for the territories of Florida, Oregon, and New Mexico.

These antebellum donation laws did not embrace the concept that land should generally be available for free. Instead, they were crafted as selective exemptions from the general rule of requiring payment for lands in order to instrumentalize white land claimants as autonomous enforcers of colonial order in frontier contexts that appeared to elude the government's conventional methods for establishing control. The broadened agency of settlers in these invasions, it was believed, would provide a more flexible and cost-effective means of expansion than using the army for conquest.

Free land laws were meant to operate to the government's advantage, improve the situation of poor white families, and, at the same time, enforce the exclusion of Indians and blacks. However, in the eyes of contemporary observers, the settlements created by the laws fell severely short of the legislative goals. The free land experiments did not combine the interests of settlers and the government in the way that legislators had imagined. Proposals for extensions of the policy to other frontier areas were therefore shelved on the congressional level. And during the 1850s, free land was once again regarded as inconceivable. Only in the crisis of the Civil War did the US again adopt free land legislation, albeit in a different form and for other ends than the earlier laws.

This book presents a history of free land policies and their social consequences in antebellum America. It aims to show how the demand and the implemented policies affected frontier populations in different ways. In the following chapters, it explores the ways in which free land proposals managed to overcome overwhelming fiscal and economic objections in the congressional debate – and how the concerns structured the policies that were eventually implemented. In doing so, it reconstructs the settlement experience from multiple perspectives. While assessing the opportunities that free land policies opened to lower-class whites, it also aims to shows how they contributed to the subjugation of Indians and African Americans. Most crucially, it analyses how the demands and policies affected the relations of white settlers and Native peoples on the frontier. Finally, it shows why the local policy precedents did not open a path to a general law that made frontier lands available for free.

Perspectives on Land Policy History

The negotiation and evolution of US land policy before the Civil War and its impact on western settlements have been studied many times. For both methodological and conceptual reasons, however, the issue bears revisiting. New sources have become available since the major works on this subject were published several decades ago. Notably, the Library of Congress has digitized its collection of early House and Senate bills. These bills were mostly printed for internal use and were often not available to the historians who examined

the early land debates.[5] The *Territorial Papers of the United States*, published between 1934 and 1975 in 28 volumes by the Department of State, contain a wealth of material that has still not been adequately used in the literature. Petitions and letters from private citizens reprinted in the *Territorial Papers* give a broader view of the negotiation and social consequences of the early free land laws.[6]

Recent digitizations of land applications and patents by the Florida Department of Environmental Protection,[7] the Oregon State Archives,[8] and the US Bureau of Land Management,[9] as well as the compilations of land application abstracts by the Genealogical Forum of Portland, Oregon,[10] have laid the groundwork for a previously infeasible quantitative examination of settlement processes in the territories of Florida, Oregon, and New Mexico. The new quantitative data correct faulty and incomplete statistics that scholars used in the past and enable the calculation the success rates for land claimants in different locations.[11] GIS maps of historical county and state borders by the Newberry Library[12] and the Minnesota Population Center,[13] together with Claudio Saunt's chronological map of Indian land cessions and reservations,[14] make it possible to place land claims within their historical communities and to re-

5 See Library of Congress, "A Century of Lawmaking for a New Nation: US Congressional Documents and Debates, 1774–1875," accessed January 1, 2015, http://memory.loc.gov/ammem/amlaw/lawhome.html.

6 See Clarence E. Carter, ed., *The Territorial Papers of the United States*, 28 vols. (Washington, DC, 1934–1975).

7 See Florida Department of Environmental Protection, "FDEP Division of State Lands Land Records," 2015, http://tlhdslweb.dep.state.fl.us/florida/flpro/viewer.htm.

8 See Oregon State Archives, "Oregon Historical Records Index," *Oregon Secretary of State*, 2013, http://genealogy.state.or.us/.

9 See US Bureau of Land Management, "General Land Office Records," 2015, http://www.glorecords.blm.gov.

10 See Lottie L. Gurley, ed., *Genealogical Material in Oregon Donation Land Claims*, 4 vols. (Portland, OR, 1957–1967); Lottie L. Gurley, ed., *Genealogical Material in Oregon Provisional Land Claims. Abstracted from Applications, Vol. I–VIII 1845–1849* (Portland, OR, 1982).

11 The literature still frequently uses Thomas Donaldson's 1884 statistics to understand the antebellum free land laws. Donaldson, however, used incompatible data from the three localities. He gives the number of initial applications for Florida, but for the Oregon Territory he enumerates the number of issued patents, and for New Mexico Territory he gives the number of certified claims that local land officers forwarded to the General Land Office for examination. The figures provided by Donaldson have led scholars to overestimate the significance of the free land laws in Florida and New Mexico Territory and to understate the size of settlements in the Oregon Territory. See Appendix A below and Thomas Donaldson, *The Public Domain: Its History with Statistics* (Washington, DC, 1884), 295–297, 996.

12 The Newberry Library, "Atlas of Historical County Boundaries Project," accessed February 9, 2016, http://publications.newberry.org/ahcbp/.

13 Minnesota Population Center, "National Historical Geographic Information System: Version 2.0," accessed February 12, 2017, https://www.nhgis.org.

14 Claudio Saunt, "The Invasion of America," July 31, 2017, http://www.ehistory.org/projects/invasion-of-america.html.

construct a Native presence that other sources often ignored or played down. In combination with traditional archival research, the new sources generate a more accurate view of the political negotiation of proposals in Congress and the social dimensions, localities, and trajectories of settlements as well as their impact on Indian nations.

Most works on land policy in early America were written from progressive and neo-progressive perspectives. Historians of the 1910s to 1970s, such as George Stephenson,[15] Benjamin Hibbard,[16] Roy Robbins,[17] and Paul W. Gates,[18] understood public land history in terms of an intra-white struggle among common settlers, landlords, and speculators seeking to monopolize the western lands to their exclusive advantage. This perspective largely ignored the fact that white settlers and speculators competed for control over land they dispossessed from Indians.

The newer literature recognizes the limitation of the progressive public land histories; few serious historians of US western expansionism today would deny that Native peoples were dispossessed and displaced as a result of the increasingly generous land policies.[19] For a lack of other accounts, the works of Roy Robbins and Paul Gates, however, have remained influential, and even recent works rely on these authors for their discussion of the land debates and policies during the late eighteenth and early nineteenth centuries.[20] Perhaps for this reason, the central importance of anti-Indian and anti-black racism in the negotiation of the early federal free land laws is still not understood sufficiently. Most of the early free land proposals that Congress agreed to discuss were formulated explicitly as programs that would broaden economic opportunities for poor white families and facilitate the dispossession and even murder of Indians as well as the exclusion and enslavement of blacks. The antebellum free land laws that were passed for Florida and Oregon were not peaceful attempts "to cope with the Indians" as a matter of "national defense" (as Robbins writes),

15 See George M. Stephenson, *The Political History of the Public Lands from 1840 to 1862: From Preemption to Homestead* (Boston, 1917).

16 See Benjamin H. Hibbard, *A History of the Public Land Policies* (New York, 1924).

17 See Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776–1970*, 2nd ed. (Lincoln, NE, 1976).

18 See Paul W. Gates, *History of Public Land Law Development* (Washington, DC, 1968).

19 See Reeve Huston, "Land Conflict and Land Policy in the United States, 1785–1841," in *The World of the Revolutionary American Republic: Land, Labor, and the Conflict for a Continent*, ed. Andrew Shankman (New York, 2014), 328; Benjamin T. Arrington, "'Free Homes for Free Men': A Political History of the Homestead Act, 1774–1863" (PhD diss., University of Nebraska – Lincoln, 2012), 7; William G. Robbins, "The Indian Question in Western Oregon: The Making of a Colonial People," in *Experiences in a Promised Land*, ed. G. Thomas Edwards and Carlos A. Schwantes (Seattle, 1986), 65, note 10.

20 As of October 2017, Google scholar counts 136 citations to Roy Robbins' book since the year 2000 and 375 references to Paul Gates' book during the same period. See Google, "Google Scholar," accessed October 24, 2017, scholar.google.com.

and it trivializes the intent of the Florida Armed Occupation Act's makers to state that the law responded to "Indian troubles" (as Gates contends).[21] Given the laws' racist implications and (as I will show) catastrophic consequences, a perspective is needed that goes beyond the justifications offered by their designers.

More recent studies of free land politics in antebellum America, such as those by Jamie Bronstein,[22] Reeve Huston,[23] Jonathan Earle,[24] Mark Lause,[25] and Benjamin Arrington,[26] focus on the democratic, egalitarian, and even antiracist goals of land reformers from the 1830s to 1850s. While these studies give an accurate account of the political movements that they examine, their focus lends itself to an interpretation of free land politics as an essentially democratizing and egalitarian force. This book aims to balance these positive narratives by reconstructing the problematic sides of earlier free land politics, including how racism served as a strategy frontier whites used to access land and government funds. Demands for free land for settlers only became conceivable in the antebellum years when proposals were geared to create, enforce, and expand a racist order across the North American continent.

This book is a contribution to the growing literature that understands the selectively democratic institutions of the early US as a settler colonial formation.[27] While other colonialisms sought to coexist with Indigenous populations to master and exploit them, settler colonialisms were premised on the idea that white European settlers had a superior and ordained claim to the colonial land base for cultural and economic reasons and that the original inhabitants therefore could be displaced. As an exclusionary "settler society," the United States "required the practical elimination of the natives in order to establish itself on their territory."[28] A chief concern of land politics during the antebellum era was

21 Robbins, *Our Landed Heritage*, 154, 153; Gates, *History of Public Land Law Development*, 388.
22 Jamie L. Bronstein, *Land Reform and Working-Class Experience in Britain and the United States, 1800–1862* (Stanford, 1999).
23 Reeve Huston, *Land and Freedom: Rural Society, Popular Protest, and Party Politics in Antebellum New York* (New York, 2000).
24 Jonathan H. Earle, *Jacksonian Antislavery and the Politics of Free Soil, 1824–1854* (Chapel Hill, 2004).
25 Mark A. Lause, *Young America: Land, Labor, and the Republican Community* (Urbana, 2005).
26 Arrington, "'Free Homes for Free Men.'"
27 The best known works in the field of settler colonialism are Aziz Rana, *The Two Faces of American Freedom* (Cambridge, MA, 2010) and Walter L. Hixson, *American Settler Colonialism: A History* (New York, 2013). Several comparative studies have drawn attention to common features of the early United States and other settler colonies. See, for example, John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650–1900* (Montreal, 2003); James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783–1939* (Oxford, 2009), and Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Cambridge, MA, 2007).
28 Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 387–409, 389.

to shape the processes of displacement and resettlement to make them conducive to the government's finances and to minimize military expenses.

The reference to settler colonialism as a structuring principle of early US society puts the understanding of the history of land politics on a better footing. At the same time, the analysis of land politics and distribution during the antebellum era helps to shed light on the dynamics and mechanisms of settler aggression and seizures of Indian land that have been neglected in recent scholarship. Settler colonial studies place their principal focus on the antagonism between settler societies and the Indigenous communities they expelled and destroyed. The internal social differentiation and competition of social groups within white society and the contrasts between the interests of local and national governments, on the one hand, and those of private citizens, on the other, are therefore often assumed to be of little interest.[29] As I will show throughout this book, however, anti-Indian aggressions had a constant source not only in the general society's commitment to bringing all desirable land and natural resources under settler control but also in these intra-white struggles. This study, therefore, is not only an update to the public land histories, but also an attempt to bring an understanding of the complicated and contradictory politics and economics of land distribution (that progressive historians like Paul W. Gates and others have dissected brilliantly) to the analysis of expansive settler societies.[30]

In order to emphasize the frequently diverging and even conflicting coalition of interests leading the colonization of the American West, throughout the study I use the term coined by Norbert Finzsch, "settler imperialism," instead of the more common "settler colonialism." In his analysis of the interdependent relation between aggressive frontier settlers and economic and political elites in the metropolises and regional centers in North America and Australia during the nineteenth century, Finzsch underlines that the seizure of Indigenous land was generally a joint effort on the part of discernable groups that all stood to profit in different ways from dispossessing the original landowners. While

29 In his widely cited book on the theory of settler colonialism, Lorenzo Veracini conceptually dissolves the tension between government authorities and settlers altogether. US settlers are said to have "carried a foundational sovereign entitlement" with them and were supposedly not subordinate to the federal government in their movements and doings. He leaves out the state as a structure separate from settlers, arguing that "the history of settler displacement should be seen as fundamentally characterized by non-state corporate forms." Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndmills, UK, 2010), 65, 60.

30 While free land policies have been appraised as vehicles of colonization before, existing studies are generally not concerned with intra-white conflicts about land distribution and the difference between policy aims and outcomes. See, for example, Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton, 2017); Laura Jensen, *Patriots, Settlers, and the Origins of American Social Policy* (Cambridge, UK, 2003); and Douglas W. Allen, "Homesteading and Property Rights; Or, 'How the West Was Really Won,'" *Journal of Law and Economics* 34, no. 1 (1991): 1–23.

settlers were often the immediate aggressors moving into Indigenous territory to claim land and natural resources, political and financial elites provided the necessary legal sanction, military support, and funding. Settler imperialism was rhizome-like in that agency was shared between the participating groups and the process of displacement and resettlement had no discernable core or periphery.[31] Finzsch's concept is helpful for understanding the tension between the divergent strategies of policymakers and frontier settlers that partly complemented each other but were also in conflict, at times even fundamentally. Although the government devised strategies to project its power, and settlers legitimized their interest in privately appropriating land by pointing to the shared goal of expanding a white settler society, their interests were rarely simply identical in practice. Building on Finzsch's conception, I will show that the frictions between frontier whites and state authorities were in themselves a source of aggressive behavior against Native peoples. Not only did frontier whites act independently and sometimes against the stated policy of their government when they took Indian land and drove away its previous owners. At times, aggressive settler behavior had more to do with winning recognition for land claims or funding from tightfisted lawmakers in Washington than with an interest in land and other natural resources that Indian nations controlled. In this way, internal contradictions and social tensions within white settler society turned outwards and translated into seemingly non-directional anti-Native sentiments and actions.

Outline of Chapters

The chapters of this volume follow the negotiation of demands for free land in Congress, the development of laws, and the resulting settlements during the antebellum years (in roughly chronological order). The chapters build on each other as legislative proposals were drafted with a view of earlier discussions and the legislation's design impacted settlements on the ground. The settlement experience, in turn, influenced later congressional debates. Readers who are interested only in a particular period or a specific legislative proposal are advised to read the conclusion for a shorter version of the overall narrative.

31 See Norbert Finzsch, "'The intrusion therefore of cattle is by itself sufficient to produce the extirpation of the native race': Social Ecological Systems and Ecocide in Conflicts Between Hunter-Gatherers and Commercial Stock Farmers in Australia," *Settler Colonial Studies* 7, no. 2 (2017): 164–91, 169–70; Finzsch, "'… Extirpate or remove that vermin': Genocide, Biological Warfare, and Settler Imperialism in the Eighteenth and Early Nineteenth Century," *Journal of Genocide Research* 10, no. 2 (2008): 215–32, 219; Eva Bischoff, "Settler Imperialism and Indigenous Peoples: The Case of Australia," in *The Palgrave Encyclopedia of Imperialism and Anti-Imperialism*, ed. Immanuel Ness and Saer Maty Ba (Basingstoke, UK, 2015), 415.

Chapter Two introduces the congressional debates of free land concepts between the 1790s and 1820s. There were grassroots efforts from across a broad spectrum that approached Congress from many parts of the country, yet lawmakers generally dismissed these demands for economic and fiscal reasons; they only discussed proposals pitching land grants as a means for resolving critical frontier contexts that appeared to challenge the US government's conventional methods for conquering and incorporating territory. The chapter presents six legislative pitches from the years 1798 to 1828 that Congress took seriously enough to consider and identifies the features they had in common that prompted Congress to act.

Chapter Three follows the rise of mass politics of free land in the West and Southwest during the late 1820s to 1830s; it details how citizens and legislators from Missouri and Arkansas sought to win recognition for the free land demand on the federal level. The chapter recounts an elaborate campaign in which citizens and lawmakers from the two states smeared their Indian neighbors as dangerous savages who needed to be checked by armed settlers. In this way, the campaign mimicked arguments that had previously led Congress to consider proposals. After army officials had discredited these stories and eastern legislators proved to be unmoved, Missouri's senators instead developed two widely acclaimed bills that sought to use settlers to resolve problems that the US government faced in its push to conquer and incorporate Florida and the Pacific Northwest. The chapter follows the development of all three bills and details how political and fiscal concerns shaped the proposals at every stage of their development.

The settlement history that resulted from the donation laws is recounted in Chapter Four. The chapter presents the locations and trajectory of settlements and assesses the social consequences of the legislation for land claimants as well as for the Native populations the laws aimed to replace with white European Americans. The chapter opens with a look at an Arkansas state law from 1840 passed after federal support for land donations within the state was evidently not forthcoming. The law, which was designed to further the state's development, is introduced as a point of comparison to the two longer sections on the settlement experiences in Florida under the 1842 Armed Occupation Act and in the Oregon Territory under the 1850 Donation Land Claim Act. The latter two sections close with an assessment of the laws' impact on the Native populations in the respective area.

Chapter Five presents the political debates and official assessment of the Florida and Oregon laws' results during the 1850s and the subsequent transformation of free land politics. The chapter shows how the results of the two federal laws led to disillusionment among policymakers, who came to question the idea that land claimants could supplant troops as colonizers and state builders. In turn, the popular land reform movement of the 1850s rethought

the demand for free land and presented it strictly as a matter of social and economic development. Finally, the chapter recounts the passage of the 1862 Homestead Act and shows how the law's objectives differed from the antebellum legislation.

The conclusion gathers together the various strands of the argument and assesses the place of the Florida and Oregon land laws' place in the development of frontier land law. The chapter also discusses the complicated relationship of frontier settlers to their government and the supposedly shared goal of colonization that the laws and the settlement experiences brought to light.

2 – Defining the Shape of the Possible: Free Land in Congressional Debates, 1798–1829

How did free land acquire the status of a demand that legislators would take seriously? Although generally rejected, a series of initiatives for free land had been discussed in Congress since the late 1790s. Often initiated by constituents' petitions or territorial legislatures' memorials, these legislative projects negotiated what the shape of free land policy could be, long before any actual law was authorized. While the first initiative for free land was discussed in the House of Representatives in 1798, no actual legislation was passed on the federal level for almost forty-four years until 1842, when the Florida Armed Occupation Act became law.

The following sections explore how, during the 1790s to 1820s, free land was viewed as a viable political project and assumed to be worthy of congressional consideration. It identifies six successive projects to pass free land legislation and shows under which conditions and in what shape the demand could be articulated in Congress. By identifying discourses that proponents mobilized and the concerns that opponents raised, the chapter shows how the demand became permissible and, at the same time, failed to become actual policy. Following a section that explains the conflicting relationship between free land and fiscal and economic policy in the early United States, a chronologically organized section contextualizes the different attempts to pass free land legislation between 1798 and 1829. This is followed by a section that identifies central themes and discourses that these proposals drew upon.

2.1 The Political Dismissal of a Popular Concept

The idea that settlers were entitled to claim land free of government interference was prominent in the radical anti-British agitation that led up to the American Revolution. The vision of free land that Patriot leaders advocated stemmed from a utopian tradition of liberalism. It envisioned a society that was based on private property rights that was more harmonious and in line with the original design of John Locke than the fledgling commercial society of the colonies. According to this idea, the right of exclusive disposal that came with private property had its legitimate foundation in the personal labor of owners. By mixing or joining their labor with the soil, settlers would be able to lay claim to parcels of western frontier land that had not been improved for agricultural use.[1] Free land would open up an avenue by which poor white men on the eastern seaboard of the United States could escape the inordinate power of the wealthy for whom they would have to work if they stayed. In the American West, they would become landowners on their own, and those who stayed in the East would face better working conditions as there was less competition for the jobs. Concepts of free land promised to reconstitute a society of private owners on a more equitable and harmonious basis, without doing harm to anyone or taking away any existing property.[2]

Free land was thought to be to the advantage of the entire settler community. The government would also benefit, as the wider distribution of property would broaden its tax base. In a political sense, free land would renew the compact between the nation's non-elite citizens and the American government. When lower-class whites became owners of property, Thomas Jefferson suggested, they would look to the government as a guardian of their interests. Free land would establish and reinforce a sense of citizenship and national duty in lower-class settlers and create a population that could be relied upon to understand itself as Americans and to act accordingly. "The small landholders are the most precious part of a state," Jefferson argued.[3]

1 Locke was rarely cited by name in the land debates of the late eighteenth and early nineteenth centuries. But the notion of work as the foundation of private property in land as presented in his 1689 *Second Treatise* was invoked by virtually all advocates of land reform. See John Locke, "The Second Treatise: An Essay Concerning the True Original, Extent, and End of Civil Government," in *Two Treatises of Government and A Letter Concerning Toleration*, by John Locke, ed. Ian Shapiro (New Haven, 2003), 113–119.

2 See Stanley N. Katz, "Thomas Jefferson and the Right to Property in Revolutionary America," *Journal of Law and Economics* 19, no. 3 (1976): 467–88; Lisi Krall, *Proving Up: Domesticating Land in US History* (Albany, NY, 2010), 1–29; Gerhard Senft, "Das Bodeneigentum – Problemgeschichte und Theorieentwicklung," in *Land und Freiheit. Zum Diskurs über das Eigentum von Grund und Boden in der Moderne*, ed. Gerhard Senft, Kritische Geographie 18 (Vienna, Austria, 2013), 13–15.

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

While free land never became the subject of a formal proclamation by the new authorities, during the revolutionary era, it was a widely held view that the struggle for independence was about creating a more egalitarian society of autonomous small producers and giving the common folk access to undeveloped land. According to these notions, which lived on for decades in tavern talk and newspaper columns, overthrowing British rule was about doing away with the power of large landowners who were supposedly threatening to reduce American farmers to mere tenants. In anticipation of the coming redistribution, many farmers in the Northeast had squatted on land owned by large, British-supporting proprietors during the Revolutionary War.[4]

The concept of free land, however, was not realized after Independence. In an effort to avoid higher taxes, state governments sold the lands within their borders for revenue while local courts restored the claims of large proprietors.[5] After the original thirteen states ceded their claims to land in the American West to the newly established United States government, the sale of western land became a source of federal revenue. In the Land Ordinance of 1785, the Confederation Congress mandated that all western lands were to be surveyed into squares of 640 acres and thereafter sold at public auction to the highest bidder.[6] When the federal government went into operation in 1789, it assumed the states' debt and, in return, became the direct owner of a vast stretch of land between the original colonies' western borders and the Mississippi River. The Northwest Ordinance of 1787 gave the federal government authority over new western territories until a sufficient population of citizens allowed the territories to adopt democratic self-rule.[7] Before settlers were allowed to buy land, the Ordinances of 1785 and 1787 also required that the federal government purchase the Indians' title to the land. While it was assumed that the Native peoples would inevitably be dispossessed of their lands, this had to be done by treaties so that unnecessary friction could be avoided in the process of colonization.[8]

Whereas the colonial predecessors had granted free land to settlers from time to time, the new republican authorities refused this entirely, despite the fact that their authority resulted from a revolution that, for many, had been

4 See Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760–1820* (Chapel Hill, 1990), 14–21.

5 Ibid., 20–24.

6 See "An Ordinance for Ascertaining the Mode of Disposing the Lands in the Western Territory," May 20, 1785, in *Journals of the Continental Congress, 1774–1789*, ed. John C. Fitzpatrick, vol. 28 (Washington, DC, 1933), 375–81.

7 See "An Ordinance for the Government of the Territory of the United States North West of the River Ohio," July 13, 1787, in *Journals of the Continental Congress, 1774–1789*, ed. Roscoe R. Hill, vol. 32 (Washington, DC, 1936), 334–43.

8 See Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, MA, 2007), 131–132.

Figure 1: Before the Civil War, the US government used land to pay for the services of its soldiers in all major conflicts. Engraved land warrant issued in 1856 by the commissioner of pensions to Ann Hawkins, widow of a Revolutionary War veteran. Source: National Archives, Records of the Bureau of Land Management.

about settlers' natural right to lay claim to the soil.[9] The tightfisted policy of the new authorities was frequently criticized, giving rise to both protests and violent clashes. Nonetheless, during the sixty-six years following the *Declaration of Independence*, the US government rejected any notion of authorizing land grants to settlers.[10] As the United States expanded westward in 1803 to incorporate Spanish Louisiana and southward in 1819 to absorb Florida, it extended its land system over these areas and ended existing practices of giving free land to settlers. "Lands, which had been for fifty or a hundred years open to every settler, without any charge beyond the expense of the survey, were, the moment they fell into the hands of the United States, held up for sale at the highest price that a public auction, at the most favorable seasons, and not unfrequently a spirit of the wildest competition, could produce," a southern senator complained in 1830.[11] Where the US expanded its sovereignty, it put an end to existing systems of granting land to settlers, and made land, instead, a source of federal revenue.[12] While the frontier lands of the West were still often described with terms such as "public lands" or the "public domain," which

9 On land grants to settlers during the colonial era, see Amelia C. Ford, *Colonial Precedents of Our National Land System as It Existed in 1800*, Bulletin of the University of Wisconsin 352 (Madison, 1908), 95–103.

10 See Taylor, *Liberty Men and Great Proprietors,* 112–22; Arrington, "'Free Homes for Free Men,'" 10–14; Robbins, *Our Landed Heritage*, 3–11.

11 Robert Y. Hayne, Speech of February 13, 1830, *Register of Debates*, 21st Cong., 1st sess., 32.

12 See Gates, *History of Public Land Law Development*, 49, 56, 61–63; Robbins, *Our Landed Heritage*, 15–17.