How the West was Claimed:

The Homestead Act and the General Allotment Act

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Whenever someone looks at a globe or map of the world one thing should clearly stand out, the United States is big. At a whopping 2.3 billion acres, it is nearly the size of the entire continent of Europe (2.52 billion acres), and either the 3rd or 4th largest nation.[1] Yet, when this nation obtained independence in 1783 it only had claim to the land east of the Mississippi River and north of Spanish controlled Florida. The rest of what would become the United States was owned/claimed by the United Kingdom via Canada, France, Spain, Russia, and later Mexico.[2] While the United States had a relative humble beginning, the land it owned was rich with fir, timbers, farmland, and other resources.

All this land blessed with an abundance of resources, only fueled its desire to claim more land. "That claim is by the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us."[3] This line, written by John O'Sullivan in 1845 not only popularized the term manifest destiny, it summed up the belief of many Americans since the early 19th century that we had a divine right to the rest of the land despite the fact that much of it was owned/claimed by other nations, which the Louisiana Purchase and the cession of Florida helped fuel. By 1847 and 1848, these beliefs seemed to be fully justified and rewarded when California and the Oregon Territory were officially recognized and ceded to the United States and the continuous boundary of the continental United States was established from sea to shining sea.

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[1] Depending on how you measure the disputed areas of China and if you choose to include Taiwan, or if you count the US Territories as part of the United States, determines the ranking of 4th or 3rd.
[2] Hawaii was its own independent kingdom prior to a *coup d'état* led by foreigners, mostly US citizens and businessmen, and illegally supported by the US Minister to Hawaii John L. Stevens.
[3] O'Sullivan, J. (1845, December 27). New York Morning News.

This abundance of land is probably the single most important resource of the United States, however with all that land came a unique issue: how to get people to settle it and live throughout the whole nation? In order to motivate people to move and settle the western frontier Congress passed the Homestead Act of 1862. The Homestead Act was an easy way to manage the land and created simple rules for settlers to follow in order to obtain legal ownership of the land for pennies on the dollar. Additionally, the Homestead Act appealed to the politicians of the day idolization of the yeoman farmer.

The land that was opened up for settlement under the Homestead Act however was already being used by another group, the various people and tribes of American Indians.[4] Following the Indian Removal Act, nearly all American Indians east of the Mississippi were relocated to west of the Mississippi. Prior to the Homestead Act, most of the western population migration was merely passing through these lands on their way to the Oregon Territory, California, and/or Mormons on their way to Utah. However, after the passage of the Homestead Act, more and more people began to claim a piece of the heartland for themselves. Thus began a series of events which has left a lasting legacy on America Indian communities to this day.

The Homestead Act of 1862 created the demand for more land and the foundation of federal land allotment policy, both of which helped inspire and cause the Dawes Act of 1891, a reverse Homestead Act toward American Indians, and the source of many of the issues involving American Indians that continue to this day including the Dakota Access Pipeline.

[4] There are many names which American Indians preferred to be called including; Indians, Native Americans, First Nations (in Canada), Native Alaskans, Indigenous people of Americas, or by their tribal affiliation and heritage. As many people prefer to be addressed by differing terminologies, it is difficult to insure that no person or group is upset or offended by the term the paper uses to describe the many different people and tribes. However, for this paper we will use the term “American Indian” as that is the terminology that appears on the US Census.

The Homestead Act of 1862

The Homestead Act of 1862 has long been lauded as a highly successful policy which facilitated the population migration to the heartland of the United States.

When looking at the facts of the legislation it is easy to understand why it has been viewed as a tremendously successful policy. For starters, about 270 - 285 million acres of land, roughly 10% of the landmass of the United States, was settled under the Homestead Act.[5] The act itself was in effect from January 1, 1863 when Daniel Freeman filed the first claim, until May 1988 when Kenneth Deardorff became the last person to receive his land patent. This means that between the first claims to the last patent granted the policy lasted for 125 years.[6] In 1890, seventeen western stats/territories had reached a total population of 6,451,000 causing the US Census Bureau to announce the end of the western frontier.[7] Of that 6,451,000 it is possible, given the average family size of 1890[8] and the number of homestead claims filed and land patents issued from 1863 – 1890, between 29% - 72% of that population was a result of homesteading.[9] Additionally, twelve western states from 1867 – 1912 were admitted into the United States resulting all lower 48 states being part of the United States. The population

[5] According to "Homesteading by the Numbers" Homestead National Monument of America (U.S. National Park Service) https://www.nps.gov/home/learn/historyculture/bynumbers.htm, 270 million acres were settled under Homestead Act but Marion Clawson's *Uncle Sam's Acres* it was 285 million acres.

[6] The Homestead Act itself was repealed in 1976 by the Federal Land Policy and Management Act of 1976 for all states but Alaska, which was granted a ten-year extension. This means the Homestead Act formally ended in 1986, though the last patent was not issued until 1988. So in effect the policy ended after 123 years however from the time the first claim was issued until the last patent was granted it was 125 years.

[7] Johnson Ch. 3

[8] 4.9 According to Glick, P. C. (1942). Family Trends in the United States, 1890 to 1940. American Sociological Review, 7(4), 505–514. https://doi.org/10.2307/2085045

[9] Based on homesteading claims filed from 1863 – 1889 there were 926,621 claims filed which multiplied by 5 equals 4,633,105, or 72% of 6,451,000. Of the 926,621 claims, only 372,659 were granted patents, which multiplied by 5 is 1,863,295, or 29% of 6,451,000. There is no data about the number of multiple claims filed by singular person, or families/companies manipulating the system to claim a large swath of land, or number of people that moved when their homestead failed.

migration towards the west, along with the total amount of land settled and the longevity of the policy, all point towards the policy being successful.

Besides those numbers, there were other measures of success. The promise of land ownership was a key factor in motivating Europeans to immigrate to the United States (Dovring 1962). Notably, Scandinavians seemed especially receptive to homesteading as did Germans, though the exact level of influence the policy had in relation to other factors is harder to measure. The Homestead Act was also very progressive for its time in that it allowed women, African-Americans, and freed slaves to all be able to own property. Though information about the racial demographics of homesteaders is hard to find (Edwards 2008), we do know that about 10% – 12% of homesteaders were women.[10] Additionally, the legacy of the act has had a positive impact on the descendants of homesteaders who were able to inherit the property and wealth that the Homestead Act created the foundation for (Sherraden 2005). Thus, there are likely many people in the United States today that have a higher socioeconomic status because one of their ancestors was able to obtain property under the Homestead Act.

The reason for the Homestead Act's seeming successes has a lot to do with it design of the policy. The key provisions of the Act were: it allowed people to claim 80 or 160 acres of non-occupied public land; any person who was a head of a household over the age of 21 could file a claim; the person filing a claim had to be a US citizen or an immigrant who intended to become a citizen and had never borne arms against the US; the homesteader had to maintain continuous residents on the claimed land for 5 years; the homesteader had to improve the land; and after meeting all of the qualifications the homesteader had to pay nominal fee ($10 filing fee,

[10] "The Top 10 Myths about Homesteading"
https://www.blm.gov/wo/st/en/res/Education_in_BLM/homestead_act/legacy/top_10.html

$2 commission, $6 fee for land patent in 1863) to receive their land patent and have full ownership of the land. These easy to follow provisions and requirements, along with the relative low cost of the fees, seemed to appeal to a number of people who sought to own their own property. Furthermore, the fact that there was little oversight and regulation for people to get witnesses to support their claim that they had improved the land also made it appealing to corporations and cunning land prospectors.

Problems with the Homestead Act

While the Homestead Act is mostly seem as a success, it does not mean that it did not have its share of issues. It is estimated that only about 40% of claims were successful. When thinking about the success of a policy, most would not claim a policy that had a failure rate of 60% was a success.

A key issue with the legislation was the exclusion of the South and most southerners. The Homestead Act clearly states in both Sec. 1 and Sec. 2 that anyone that took up arms against the United States or given any aid or comfort to its enemies, was ineligible to homestead. This meant that most southerners, whom had either fought for or supported the Confederate States of America, could not homestead. During Reconstruction, lawmakers sought to open up lands in the south for the poor white farmers and freed slaves so they would not have to work sharecropping or tenant farming on the lands owned by the plantation establishment, and successfully passed the Southern Homestead Act of 1866 (Gates 1940; Hoffnagle 1970; Lanza 1999). The Southern Homestead Act was a disastrous failure, since many of the intended beneficiaries were too poor to afford even the low cost of homesteading (Gates 1940), violence and opposition from the white population over the prospect of the freed slaves owning land (Lanza 1999), and corruption

of state and local officials made it almost impossible for some people to successful claim and patent land (Hoffnagle 1970; Lanza 1999). Ultimately, in 1876 a mere ten years after the passage of the Southern Homestead Act, it was repealed by the newly readmitted southern states.

The issues with the south were not the only problems with the Homestead Act. The act was also criticized for the land being too small for successful farming (Hansen and Libecap 2004). Even contemporaries of the policy viewed it as having a flawed design. Notably, John Wesley Powell examined not only the climate conditions of the western states, he also came up with proposals to better divide and section off the land to increase the success rates, which was rejected. However, in time politicians realized that the size of the land granted from the original Homestead Act was too small and began to modify the Act to increase its success rate. The most notable changes to the Homestead Act were: the Timber Culture Act of 1873, which expanded the size of the land claim from 160 acres to up to 320 acres of land as long and the homesteader planted at least 40 acres of trees; the Kinkaid Amendment of 1904, which granted homesteads up to 640 acres in western Nebraska; the Enlarged Homestead Act of 1909, which expanded the number of acres for a homestead in land deemed marginal to allow for dryland farming from 160 acres to 320 acres; and the Stock–Raising Homestead Act of 1916, which allowed for homesteads of up to 640 acres for the purpose of ranching.

Each one of these changes created a new set of issues. For instance, the Timber Culture Act was subject to a significant amount of fraud and manipulation (McIntosh 1975). Additionally, since there were little rules on how to cultivate the land for dryland farming, homesteading was a possible contributor to the creation of the Dust Bowl of the 1930's (Hansen and Libecap 2003, Anderson 2011).

The Demand for Land

Some of the failings of the Homestead Act and subsequent modifications to it had a significant unintended consequence, the demand for more land.

Since the goal of the Homestead Act was to get people to move out west, it seems foolish to state that the demand for land was an unintended consequence; however, not all land is created equal. Even to this day, some land is more desirable than others, so this claim should not be shocking. In terms of homesteading, this resulted in an uneven distribution of homesteads.

When people began to move westward, they flocked to particular areas in the United States. The most popular states in terms of the number of homesteads were Montana, North Dakota, Colorado, Nebraska, Oklahoma, and South Dakota.[11] Based on the data, at least about 48% of all homestead land patents granted were from these states and about 45% of all land settled under the Homestead Act was from these 6 states.[12] The territory in the Dakotas and Oklahoma settled alone accounts for 19% – 20% of the total amount of land patented under homesteading, the implications of which be elaborated on further a bit later on.

In fact when examining more Homestead Act numbers, more questions are raised. As previously stated earlier in this piece, only about 40% of all homestead claims were successfully able to be patented. To rephrase that, 60% of all attempted homesteads failed. Again, refer back to the fact that the government and supporters of the Homestead Act, boast that it settled 10% of the land mass of the United States. When taking the failures into account, up to approximately 512 million acres or 23% of the land mass of the United States was possibly claimed under the

[11] Each of those states had over 90,000 homesteads. “State by State Numbers” - Homestead National Monument of America (U.S. National Park Service) https://www.nps.gov/home/learn/historyculture/statenumbers.htm
[12] State by state numbers from “State by State Numbers” - Homestead National Monument of America (U.S. National Park Service) https://www.nps.gov/home/learn/historyculture/statenumbers.htm

Homestead Act.[13] The difference in the amount of claims filed (Figure 1) and amount of land claimed (Figure 3) versus the amount of successful patents (Figure 2) and amount of land settled (Figure 4) can be observed below.

Figure 1

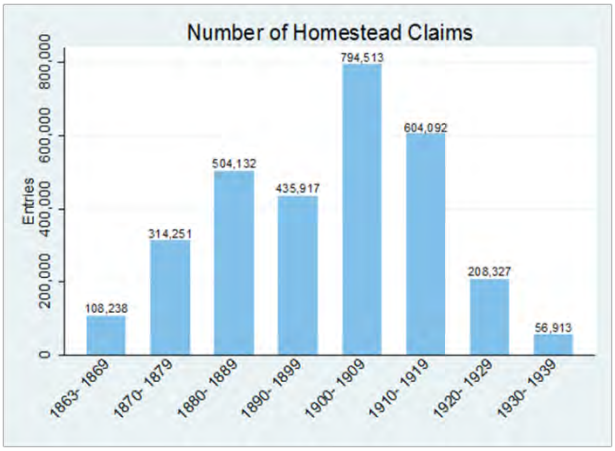


Figure 2

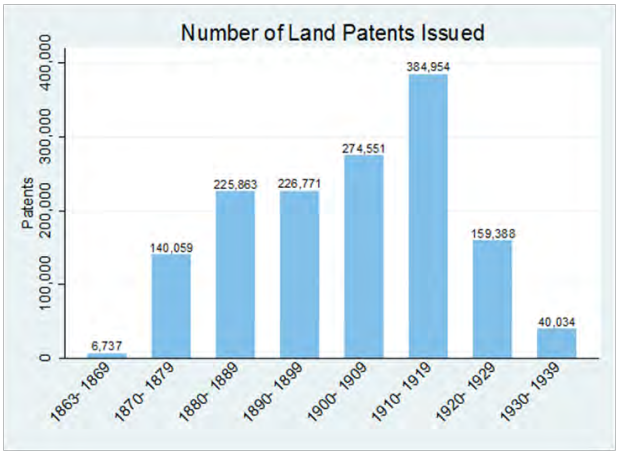


Figure 3

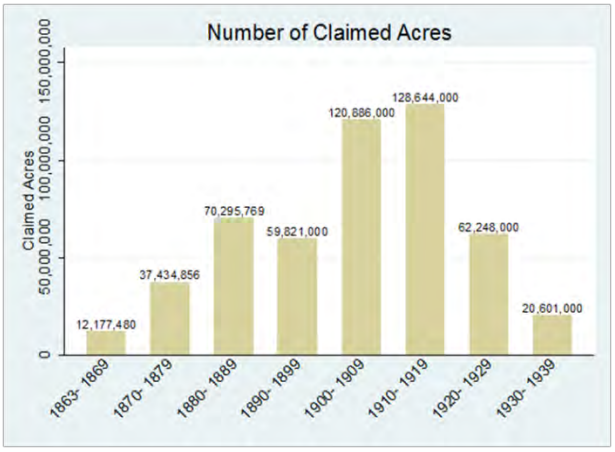
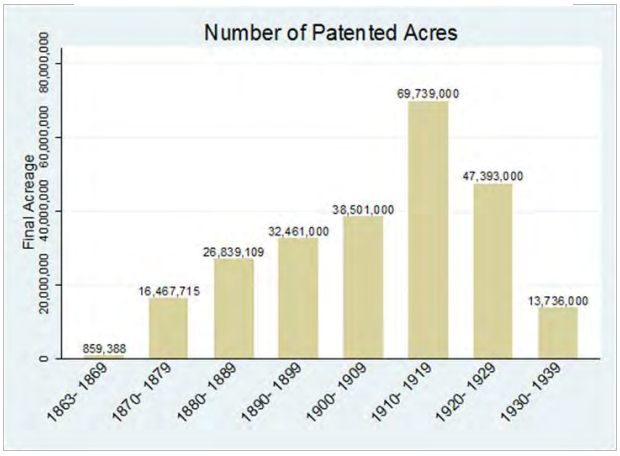


Figure 4



These figures also illustrate another point, that the majority of all homesteading activity took place during a nineteen year period. Between, 1900 and 1919, 46% of all homestead claims were filed and 49% of all the claimed acres came from this time. The figures also clearly show

[13] Note that the numbers represent the maximum possible since there is no data on if land was claimed multiple fallowing failures.

that 1910 – 1919 were the peak years when people were able to successfully obtain their land patents and the peak years for the amount of acres. While both are outliers from the established trends from prior years, the most striking observation is that the amount of acres patented nearly doubled from 38,501,000 acres in 1900 – 1909, to 69,739,000 acres 1910 – 1919. The last observation of note is that the number of claims and claimed land was going in a negative direction prior to the 1900 – 1909 timeframe.

So what are the implications of these numbers? For one, they seem show that the modifications to the Homestead Act which expanded the amount of land able to be claimed led to more claims and possibly a higher success rate. These amendments to the Homestead Act which allowed for larger claims of land occurred in 1904, 1909, and 1916, which all fit within the time of the peak years. The early 1900's was also a peak period in immigration to the United States, so it is possible that the peak years of activity were a result of the new immigrants coming to the United States to homestead. Another possible explanation for the peak years is that since someone had to be 21 years old in order to homestead, the children of homesteaders could have claimed land near or adjoining their parents land in order to create a larger piece of property for the family's business.

There is another possible explanation of why the peak years of homesteading activity took place after 1890. Throughout the literature of the Homestead Act a common footnote keeps appearing, the impact it had on American Indians. Besides a brief line and acknowledgment, not much detail is given as to how it impacted and disrupted the lives and sovereignty of American Indians. Anderson (2011) notes how the act contributed to the dispossession of American Indian land and pushed them further westward to make room for homesteaders. In Johnson's book *The Laws the Shaped America* he states, "After 1862 between 100 and 125 million acres of Indian

reservation land was also sold off to white settlers."(Johnson pg. 96)[14] Alan Guebert's newspaper article "U.S. history still shaped by 1862 law," claims that many American Indians view the Homestead Act as the leading cause for their cultural decline.

If the reader recalls, it was previously stated that 19% – 20% of the total amount of land patented under homesteading occurred in the Dakotas and Oklahoma. The significance of that number and why it is so striking is that prior to 1862, most of that land was under the ownership of American Indians and thus was not available for whites to claim or own. The area that would become the state of Oklahoma[15] was known as the Indian Territory and was the location of the reservations given to tribes that were part of the Indian Removal Act of 1830. Up north, everything west of the Missouri River between the Heart River in North Dakota and Powder River in Montana/Wyoming along with the majority of western Nebraska was the Great Sioux Nation lands.[16] When looking at the state by state homestead numbers, 34% of Oklahoma was successfully homestead while 41% of the Dakotas were successfully homesteaded.[17] It is also worth remembering that those numbers represent only the successfully homesteaded and patented land, and not the amount of land claimed but was never able to be successfully patented. Since the failure rate was nearly 60%, the amount of land which was claimed at one time could possibly be nearly 50% of each state.

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[14] Johnson footnotes that he got the information of the figures from Paul Gates' article "The Homestead Law in an Incongruous Land System" (1936)

[15] Except the panhandle of the state

[16] INDIAN AFFAIRS: LAWS AND TREATIES. Vol. 1, Laws. (n.d.). Retrieved May 9, 2017, from http://digital.library.okstate.edu/kappler/vol1/html_files/ses0168.html

[17] Individually 39% of North Dakota was successfully claimed and 32% of South Dakota was successfully claimed, however, there is independent data from when the Dakotas were still one territory which had 5% of its land successfully claimed. Since there is no way to tell where most of the homesteading occurred prior to the split of the two Dakotas and since its data predates the data from the other two states, when you combine the total acreage of the two states with the total acreage of North and South Dakota along with the pre-split total, you get 41% of the total area of the combined Dakotas successfully homesteaded.

Unlike other states, it is also possible to narrow the timeframe of when people began to homestead in these states. Prior to 1889, the Dakotas were counted as one single territory and the data of successful homestead patents states that 6% of it was successfully patented.[18] That 6% is independent from the data from after the two split, so we can deduce that 35% of the successful homesteads occurred after they spilt on November 2, 1889.[19] In the case of Oklahoma, the first two million acres was famously opened to claiming on April 22, 1889 resulting in the first great land run in the state.[20] The ensuing years saw a number of land runs in Oklahoma with the largest occurring in 1893. In both cases, 1889 is a key date, which is not a coincidence.

How all this land, along with other land ceded to American Indians to administer as part of treaties throughout the land west of the Mississippi, was taken from them and opened up for whites to settle and why it occurred after 1889 has a lot to do with a policy that in many ways is inspired by the Homestead Act, the Dawes Act of 1887.

The Loss of Sovereignty and Land

Prior to the 1871, American Indians seemed to be the recipients of certain rights which implied that they were somewhere between a state and a foreign nation. This was due to Article 1, Section 2, Clause 3 and Article 1, Section 8, Clause 3 of the United States Constitution which defined American Indian Tribes as distinct from both states and foreign nations, which the United States federal government was the only entity able to enter into agreement with. This definition would be elaborated more and interpreted in three key Supreme Court cases. These cases, known as the Marshall Trilogy, were *Johnson v. M'Intosh* (1823), *Cherokee Nation v.*

[18] State by State Numbers - Homestead National Monument of America (U.S. National Park Service). (n.d.). Retrieved April 19, 2017, from https://www.nps.gov/home/learn/historyculture/statenumbers.htm
[19] *Inbid.*
[20] Many people in Oklahoma reenact the Land Run of 1889 to this date every April 22.

Georgia (1831), and *Worcester v. Georgia* (1832). The main take away from these cases were: US citizens could not purchase land from American Indians (*Johnson v. M'Intosh*), since the Constitution differentiates American Indian tribes and foreign nations, tribes were not afforded the same rights as foreign nations and were deemed dependent nations of the Untied States and likened to a ward to a guardian (*Cherokee Nation v. Georgia*); the United States federal government was the sole authority in dealing with tribes (*Worcester v. Georgia*). This meant that all policies involving American Indians emanated from the federal government and had to be, in theory, agreed to by a tribe.[21]

All of this changed in 1871 with the passage of the Indian Appropriation Act. The Indian Appropriation Act of 1871 removed the semi-independent nation status that tribes had enjoyed and theoretical equal partners in treaties and focused more on the ward/guardian relationship. The terms of the Act stated that, "no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."[22] This meant that the United States no longer had to seek agreement from tribes to form treaties and could simply pass Acts of Congress or use executive power to change policies.[23] This new policy would pave the way for the creation of a new policy which took a lot inspiration from the Homestead Act, the Dawes Act of 1887.

The Dawes Act, also known as the General Allotment Act, had the following key provisions: members of tribes would be given an allotment of land between 160, 80, and 40 acres depending of if they were a head of household, an orphan over 18 years old, or an orphan over

[21] In practice, though many American Indians were forced/coerced into accepting policies, such as the Indian Removal Act.
[22] Indian Appropriations Act 1871 (and as amended later). (n.d.). Retrieved May 9, 2017, from http://www.ucs.louisiana.edu/~ras2777/indianlaw/appropriations.htm
[23] This policy was upheld via *United States v. Kagama* (1886)

16 years old respectfully; if they did not select a piece of land within 4 years it would be selected for them by the government; anyone that has an allotment, would be subject to state and federal laws; created inheritance guidelines; land deemed surplus would be taken away by the government and opened up for whites to claim; and the US government would Act as a trustee of the allotted land for 25 years.

Most of the arguments in favor of the Dawes Act centered on the belief that it would help "civilize" or "westernize" the American Indians, so they would act and behave more like other American citizens (Otis 2014). This was reinforced with provisions of the Act which enticed American Indians to leave their tribes by rewarding them with American citizenship.[24] Secretary of the Interior Carl Schurz went so far as to link the opening up of reservation land to white settlers as a means to increase the harmony between whites and American Indians. Secretary Schurz wrote in 1880 that, "[Allotment] will eventually open to settlement by white men the large tracts of land now belonging to the reservations. It will thus put the relations between the Indians and their white neighbors in the western county upon a new basis." That harmony however meant that tribal sovereignty had to go and with the passage of the Curtis Act of 1898, the provisions of the Dawes Act were extended to the Oklahoma and Indian Territories and the rights of tribes to have any tribal governments and courts was revoked.

There was contemporary opposition of the Dawes Act, which called it out as a land grab scheme. Notably, Senator Henry M. Teller of Colorado was a leading voice of opposition to the Act. Sen. Teller stated at the time that the Act would "despoil the Indians of their lands and to

[24] At the time, American Indians were not considered US citizens and for those who did not adhere to the Dawes, Curtis, and Burke Acts, or via marrying a white man, or fought for the US Military, would not be granted US citizenship until 1924.

make them vagabonds on the face of the earth."[25] In a similar vein, Congressman Russell Errett of Pennsylvania submitted the views of the minority of the Committee on Indian Affairs in 1880, and claimed that:

> The real aim this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indians are but the pretext to get at his lands and occupy them. … If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him lie ourselves, whether he will or not, is infinitely worse.[26]

Based on the historical record, the opening of land and making it available, whatever the motives, was a key component of the Dawes Act. This has caused some scholars to claim that the government sought to open up American Indian land to meet the demand of homesteaders in the 1880's (Bradsher 2012), and that the Dawes Act had the goal of opening up land to white settlers (Carlson 1981). Some have even speculated that the Homestead Act was possibly designed to lower the cost of government enforcement against hostile American Indians by increasing the white population density across the heartland (Allen 1991; Brazel 1989). However, as other scholars have noted, it is difficult to definitively say how much influence that western land seekers had on the allotment policy (Otis 2014).

Consequences for American Indians

For many reasons the Dawes Act can be seen as a reverse Homestead Act which targeted American Indian communities. For starters, the allotment size of 160 acres for the head of a household is identical to the size of the homestead claims at the time. In fact, the entire notion of

[25] Frank Pommersheim Broken Landscape: Indians, Indian Tribes, and the Constitution
[26] H. Rept. No. 1576, vol. V (H. R. 5038), May 28, 1880. Minortirty report on lands in severality to Indians.

staking a claim, or in the case of some American Indians allotment of land, and then needing to occupy the land for a particular number of years or else the land would be forfeited back to the United States government is identical. In both cases, men and women could receive 160 acres, it affected all states west of the Mississippi expect Oklahoma, and 1934 saw the end of the policy.[27]

So if the Dawes Act is so similar to the Homestead Act, why was it referred to as a reverse Homestead Act? The answer has to do with how the implementation of the land resulted in massive land loss for American Indian communities. In 1881, it is estimated that American Indians owned 156 million acres of land, by 1887, it had decreased to 138 million acres and following the passage and implementation of the Dawes Act amongst others acts like the Curtis Act, it had dropped to only about 48 – 50 million acres by 1934.[28] That is a loss of 106 million acres in only a 53 year period due to the Dawes Act according to Walter Echo-Hawk (2012).

The reason so much land was lost was primarily due to three provisions of the Dawes and later Curtis Act. The most obvious way so much land was taken was due to the fact that after the land was allotted to the tribe, any land deemed surplus would be transferred to the United States and opened up for homesteaders to claim. This was the provision that led to the greatest amount of land being taken. The second provision which caused much of the land to be lost had to do with the rules of inheriting the land. Unlike the Homestead Act, once a child grew up they were not given an allotment of their own and would inherit their family's allotment once their parents died. However, the land would be divided up evenly amongst all the children of the original

[27] While the Dawes Act officially ended in 1934, the Homestead Act was still in effect; however, it was severely limited and much harder to obtain land.

[28] Numbers based on figures from Echo-Hawk, Walter R. In the Courts of the Conqueror: The Ten Worst Indian Law Cases Ever Decided. Golden, CO: Fulcrum Pub., 2012. Print. and Gunn, Steven J. "Major Acts of Congress: Indian General Allotment Act (Dawes Act) (1887)." http://www.enotes.com/major-acts-congress/indian-general-allotment-act-dawes-act/print

allotment recipient and their heirs/descendants. The result was that the land often was highly fractured rendering it worthless and causing economic hardships since it was significantly more difficult to farm, leading many American Indians to sell their inherited allotment (Carlson 1978, 1981, 1992). Finally, the last provision which caused the transfer of land was the nature of the involvement of the federal government acting as the trustee. This extra layer of bureaucracy made it difficult for people to do anything with their land and whenever the land went unoccupied before its trustee status was up, the ownership of the land would revert to the United States government and be open up and sold off to whites.

The Battle in the Dakotas

Let's now examine what the effects of all these policies and consequences were by observing what has occurred in the Dakotas since 1851 and how they all factor into the protest over the Dakota Access Pipeline.

In 1851, the Fort Laramie Treaty created the boundary of what was known as the Great Sioux Nation lands or the Sioux Treaty lands. As previously stated, this territory included everything west of the Missouri River in South Dakota, everything south of Heart River and east of the Little Missouri River in North Dakota, land east of the Powder River in Wyoming, the majority of western Nebraska north of the North Platte River, and some land in eastern Montana. This massive swath of land was left to the Sioux with assurances that the United States would protect the Sioux in the territory and would deliver annuities to the tribe as long as the treaty was upheld.[29] Due to factors such as the language barriers, cultural differences, the actions of groups which did not agree with the treaty, the US military establishing forts within the Sioux land, and

[29] INDIAN AFFAIRS: LAWS AND TREATIES. Vol. IV, Laws. (n.d.). Retrieved May 9, 2017, from http://digital.library.okstate.edu/kappler/vol4/html_files/v4p1065b.html

the discovery of gold and subsequent migration trial to Montana though tribal land, the treaty fell apart.[30]

The failure of the treaty of 1851 led to the Fort Laramie Treaty of 1868. This treaty established the Great Sioux Reservation, which was all the land in South Dakota west of the Missouri River. It also guaranteed access and hunting rights in western Nebraska, all the land in North Dakota was left unceded by the tribe, and while the land in Montana and Wyoming was diminished, much of it was also left unceded. Unlike the prior treaty, the treaty of 1868 was based on the reservation granting policy and not just a general treaty, meaning that the Sioux had complete governance and rights within their reservation and did not have to allow whites into it.

A mere six years later, George Armstrong Custer discovered gold in the Black Hills of South Dakota, which are not only sacred to the Sioux but were also located within the Great Sioux Reservation. With the discovery of gold, many whites illegally rushed into the Black Hills area against the protest of the Sioux. Instead of enforcing the terms of the treaty and removing the gold miners, the Unite States government offered to buy the Black Hills from the Sioux, yet since the land was sacred to them, the offer was declined. This refusal to sell would lead to a series of open armed conflict between US Army and American Indians in the area, of which the Battle of Little Bighorn and Wounded Knee Massacre were part of.

Once the Sioux turned down the government's offer to sell the land, the government simply took it. Using the provisions of the Indian Appropriation Act of 1871, the United States Congress passed the Manypenny Agreement of 1877 which transferred ownership of 900,000 acres of the Great Sioux Reservation, including the Black Hills area and the land in North

[30] Section 3: The Treaties of Fort Laramie, 1851 & 1868 | North Dakota Studies. (n.d.). Retrieved April 19, 2017, from http://ndstudies.gov/gr8/content/unit-iii-waves-development-1861-1920/lesson-4-alliances-and-conflicts/topic-2-sitting-bulls-people/section-3-treaties-fort-laramie-1851-1868

Dakota north of the Cannonball River and Cedar Creek.[31] The Manypenny Agreement is important in modern times as it not only gave the United States government ownership of the site of Mount Rushmore, it also changed the northern border of the Great Sioux Reservation which would become the modern northern border of the Standing Rock Reservation.

The next step in South Dakota's history was to open up more land to allow for homesteaders to move in. The Sioux Act of 1889 which divide the Great Sioux Reservation into the five smaller reservations; Standing Rock Reservation, Cheyenne River Reservation, Lower Brule Indian Reservation, Rosebud Indian Reservation, and the Pine Ridge Reservation. Along with this reorganization Congress also applied the principle of "surplus land" from the Dawes Act, resulting in roughly 9 million acres being taken from the Sioux and opened up for homesteading. However, much of this land would not be claimed until after the passage of the Enlarged Homestead Act (Raban 1997). This is a clear point where the direct loss of American Indian land under the principles of the Dawes Act was for the gain and benefit of other Americans using the Homestead Act. This further supports and explains the data that most of the homesteading activity in the Dakotas took place after 1889.

Nearly one hundred years later, the United States Supreme Court rendered a ruling that would add another wrinkle to the story of American Indians in the Dakotas. During the 1970's, the Sioux Nation of Indians filed suit against the United States claiming that the Black Hills and all land taken as part of the Manypenny Agreement was illegally taken as the agreement was in violation of the 1868 Fort Laramie Treaty. After years of legal back and forth, the case was heard before the Supreme Court in 1980 in the case *United States v. Sioux Nation of Indians*. In an 8 –

[31] INDIAN AFFAIRS: LAWS AND TREATIES. Vol. 1, Laws. (n.d.). Retrieved May 9, 2017, from http://digital.library.okstate.edu/kappler/vol1/html_files/ses0168.html

1 decision, with Justice White concurring and Justice Rehnquist the lone dissent, Justice Blackmun authored the opinion of the court which determined that amongst other things the Manypenny Agreement was invalid and thus the land was unjustly taken. The Court issued orders for compensation; however the Sioux have not accepted the money since they are seeking the return of the land taken not compensation for the land.

This takes us to the current fight in North Dakota over the Dakota Access Pipeline. Due to fears that the original plans for the pipeline, which would pass to the east of Bismarck, could contaminate the water supply, the plans were changed so it would go to the west of Bismarck. This new route would have it cross the Heart River and then the Missouri River, meaning it would pass just to the north of the Standing Rock Reservation. The reason why this change of plans has led to the massive protest is that it is the culmination of all the previous issues. Diverging the pipeline to protect the white city while ignoring the risk it may pose to the reservation, conjures up memories of the Pick–Sloan Program.[32] The fact the route of the pipeline was established by the government without a need of an agreement with the reservation is due to the Indian Appropriation Act of 1871. The land it crosses between the Heart River to the Missouri River is land deemed illegally taken from the Sioux as a result of the Manypenny Agreement, which the Sioux have not relinquished their claim of nor accepted payment for. Finally, the inability to stop the construction, along with the belief that it poses a significant threat to their culture including the possible permanent loss of anthropological sites and other

[32] The Pick–Sloan Program was the construction of a series of dams along the Missouri River. According to Capossela (2015), 356,000 acres of the most fertile lands on reservations along with cultural sites were inundated. It is also estimated that the Garrison, Oahe, and Fort Randall dams eliminated 90% of the timber and 75% of the wildlife on the effective reservations (Shanks 1974). The cumulative effect of the economic impact of the loss of the most productive and profitable lands is still affecting the communities in the Dakotas (Capossela 2015).

culturally significant things like fishing and hunting grounds, is vaguely reminiscent of the Dawes Act.

Conclusion

The demand for more land created by the Homestead Act of 1862 was the impetus which led to the Dawes Act of 1891, a reverse Homestead Act toward American Indians, and the source of many of the issues involving American Indians that continue to this day. While there is no smoking gun to prove causality, the evidence does indicate that it had a consequential effect on the establishment and design on the policy. When homesteaders set off westward to stake their claim, a math problem developed. There was only so much desirable land and much of it was in areas with sizable American Indian reservations, so something had to be done to open up that land which many felt Providence had entitled them to. Under the guise of humanitarianism and feeling the full weight of the white man's burden, the politicians used the concept of homesteading to create the allotment policy to take the land they wanted resulting in the massive loss of American Indian land.

So where do we go from here? There is no easy fix or solution to undue the damages which occurred, however there are some possible intelligible solutions. The American Indian Movement (AIM), created a list of twenty propositions which they believed would help their communities. Most of the proposition dealt with the restoration of tribal sovereignty rights and reinstitution of the treaty provisions of the Constitution; however one proposition explicitly addresses the loss of tribal land. This proposition was for the federal government to restore 110 million acres of land to American Indian tribes. While many would scoff at the idea of returning 110 million acres of land back to American Indians consider this fact: currently, the United

States federal government owns about 640 million acres or 28% of all the land in the United States, and even if it returned 110 million acres back to American Indians, they would still own about 23% of the land while American Indians would then only own about 7% of the land. A combination of returning land, restoration of Constitutional rights, creating policy to add value to the land, and not protecting one group at the expense of the other would be a great beginning to heal the divide between the federal government and the numerus people and tribes throughout the nation.

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