Introduction

Big government won the West.

In the early republic, policymakers and administrators at the national level utilized the treaty system to order and control relations with Indian nations, and they used a string of government trading houses known as the factory system to pacify affairs on the U.S. frontiers. Together with trade regulation and licensing systems, government policy and public officials drove the lucrative fur trade into the control of large and accountable major firms, while limiting the potential for costly conflicts that would threaten the new nation's survival. In the 1830s, the federal government oversaw the forced removal of a hundred thousand Indians from their homes in the Southeast, relocating them on administratively manageable reservations west of the Mississippi River. Other removals in other parts of the continent fill the nineteenth century. Throughout the heart of the nineteenth century, political leaders and public administrators isolated and contained Indians on reservations and in areas in the recently acquired West, extending federal jurisdiction and administrative structures into new areas and finally across the continent. Throughout these years, policymakers and administrators designed and effected a massive land transfer program that allotted millions of acres of tribal lands to individual Indian and non-Indian landowners, an effort which reached its peak after passage of the General Allotment Act, or Dawes Act, in 1887.

These efforts were difficult and complicated, yet the Indian Office in the nineteenth century effectively administered national policy related to westward expansion and achieved its primary mission in each major era of Indian policy. Indian Office personnel administered national policies in volatile, diverse, and rapidly shifting administrative environments, and remained responsive to powerful and shifting interests both inside and outside of government. Acquisition of territories in the Great Plains, Texas, Arizona, New Mexico, California, Washington, Oregon, and eventually Alaska and Hawaii brought novel challenges. As the nation moved west,

the interests involved in frontier affairs evolved and developed: fur traders and land companies gave way to railroad and mining companies, settlement interests, farmers, and developers. To the government's interactions with the tribes of the East were added interactions with the tribes of the Southwest, the Northwest, California, and the Great Plains. To missionary societies and religious groups advocating the interests of Indians as individuals were added philanthropic humanitarians and nonsectarian Friends of the Indian. And to the main goals – pacification, removal, and containment – were added an unending and always evolving series of subordinate aims: administrators designed and implemented national social policies and programs extended goods and services to Indian populations, opened and administered reservation and off-reservation schools, initiated training and vocational programs, and undertook programs in health care, forestry, irrigation, and the development of infrastructure and natural resources.

These were not minor or tangential affairs, somehow to the side of or beneath the "important" aspects of U.S. history and development. They are not outliers. Significantly, in each major era of Indian policy, and in each region into which the United States moved, "the Indian question" existed near the center of concerns about the nation's future. Indian affairs were absolutely critical to virtually all calculations of interest, of politics, of economy, of social situation, and of national survival and future development. The founding generation, the Jacksonians, and later Americans created effective administrative procedures and structures, and accepted discretionary authority exercised by creative field agents, commensurate with the need and course of U.S. interests. In the nineteenth century, those interests centered around expansion. Our romantic false memory of an individualized, pioneering expansion across a remote and unpeopled West obscures recognition of federally led and nationally coordinated administrative and regulatory activity in the late eighteenth and nineteenth centuries.

A major argument of this book is that we need to reassess the nineteenth-century administrative state. James Q. Wilson writes, for example, in a passage typical of many scholars' approach to nineteenth-century administration,

> During the first half of the nineteenth century, the growth in the size of the federal bureaucracy can be explained, not by the assumption of new tasks by the government or by the imperialistic designs of the managers of existing tasks, but by the addition to existing bureaus of personnel performing essentially routine, repetitive tasks for which the public demand was great and unavoidable. The principal problem facing a bureaucracy thus enlarged was how best to coordinate its activities toward given and noncontroversial ends.[1]

[1] James Q. Wilson, "The Rise of the Bureaucratic State," reprinted in *Current Issues in Public Administration*, 6th ed., ed. Frederick S. Lane (Boston: Bedford/St. Martin's, 1999), 41.

Elsewhere in the same article, Wilson – again, like many public administration scholars – identifies the Interstate Commerce Commission as the first significant federal effort to regulate the economy, suggests that the tasks of the nineteenth-century military and its officers were minor and easily controlled by political leaders, and writes that "before the second decade of this [twentieth] century, there was no federal bureaucracy wielding substantial discretionary powers."[2] Many other scholars have stated similar conclusions, and these conclusions dominate the literature. Daniel Carpenter, for example, in his influential book, *The Forging of Bureaucratic Autonomy*, writes,

> Through most of the 1800s, administrative capacity in the United States – the collective talent of bureaucracies to perform with competence and without corruption or malfeasance – was the minimally sufficient ability to distribute federal largesse to electorally favored constituencies. The possibility of employing bureaucracies to address national problems, the possibility of bureaucratic planning, was almost entirely removed from the American political imagination.[3]

A careful look at expansion and Indian affairs, however, reveals a vibrant, complicated federal bureaucracy, planning and performing complex and difficult tasks in politically charged environments, full of debate over means and ends and carried out with vast grants of discretionary authority to federal field agents deployed across the continent, and doing so long before the Civil War and the New Deal. At the same time, civil administrators in a host of venues were given primary responsibility for organizing, controlling, and directing settlement and expansion. From surveyors, treaty commissioners, and explorers to trading house factors, local agents, boards of inquiry, and scientific and engineering outfits within the military, nineteenth-century civil administration is the focal point of federal activity. The regular military was never far behind, as enforcer and deterrent, but it rarely operated as

[2] Wilson, "Rise of the Bureaucratic State," 57.

[3] Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton: Princeton University Press, 2001), 47. The implications of this view have been outlined by many authors, including perhaps most prominently Theodore Lowi, who in *The End of Liberalism* takes to task the extensions of delegated power and administrative responsibility he identifies with modern liberal government. Lowi writes, for example, "The first century was one of government dominated by Congress and virtually self-executing laws. . . . It was due to this quite special and restricted use of government that Congress could both pass laws and see to their execution." Theodore J. Lowi, *The End of Liberalism: Ideology, Policy, and the Crisis of Public Authority* (New York: Norton, 1969), 128. This vastly oversimplifies the nation's first century of public administration and overestimates Congress's ability – and its desire – to direct and control that administration. Lowi's assertions about the nation's first century are made in service of a normative argument about the legitimacy of the administrative state. That argument is not supported by the historical record.

the first line of expansion. Civil administration inside and outside the military – the Indian Office as well as the General Land Office and bodies like the Post Office, the Customs Service, and the U.S. Corps of Topographical Engineers – represented the core of national administrative efforts in the nineteenth century. Public administration, not military force and not simple, unsupervised demographics, conquered the North American continent in the years from the early republic to the New Deal.

In fact, what we find in the late eighteenth century and throughout the nineteenth century is the administrative state. John Rohr's definition, from his classic book, *To Run a Constitution: The Legitimacy of the Administrative State*, is helpful:

> When I speak of the "administrative state," I mean the political order that came into its own during the New Deal and still dominates our politics. It is the form of government that Dwight Waldo described so eloquently four decades ago in his political science classic *The Administrative State*. Its hallmark is the expert agency tasked with important governing functions through loosely drawn statutes that empower unelected officials to undertake such important matters as preventing "unfair competition," granting licenses as "the public interest, convenience or necessity" will indicate, maintaining a "fair and orderly market," and so forth.
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> The administrative state is not confined to regulating industry. Its writ runs to defense contracting and procurement, military and diplomatic policy, and the institutions of mass justice that manage problems in public assistance, public housing, public education, public health, disability benefits, food stamps, and so forth.[4]

Rohr's description of the administrative state applies almost precisely to government activity promoting and managing expansion and Indian affairs. The only difference is in the timing: the administrative state defined by Rohr and Waldo existed in concrete and influential form throughout the nineteenth century.

Recognizing the contribution of the Indian Office and other administrative efforts managing national expansion reorients our understanding of the constitutional legitimacy of the federal administrative bureaucracy. Their rhetoric of limited government notwithstanding, the founding generation and subsequent generations built complicated and influential administrative structures to direct and oversee national expansion. Indian policy was a common denominator of the national government's creative activities in the eighteenth and nineteenth centuries. It stood at the center of regulatory activity, at the intersection of church and state, at the core of policy development, the focus of debates on federalism and government involvement in the economy, the creative force behind developments in public administration, and the lynchpin of national survival and expansion. Expansion and Indian affairs are what the federal government was doing *before* – before

[4] John A. Rohr, *To Run a Constitution: The Legitimacy of the Administrative State* (Lawrence: University Press of Kansas, 1986), xi (internal reference omitted).

the New Deal, before the Progressives, before the Civil War, and before the Jacksonians.

Introduction to Chapters

National administration in expansion policy and Indian affairs is the main subject of this book. Chapter 1 reviews our national myth of North America as largely uninhabited wilderness, and the assumption that expansion was an inevitable result of demographic factors and an open West. Persistent stereotypes and assumptions have encouraged scholars to overlook expansion as the first national policy supported by a variety of government institutions and numerous individual functionaries. Alexis de Tocqueville, for example, usually implied or simply stated that North America was either uninhabited or inhabited only by a few doomed native peoples. This attitude blinded him to the many situations in which Indians outnumbered white settlers, and he failed to recognize the demands citizens were making on the American government for services, regulation, and protection, and he failed to understand the interplay between Western policy and the established communities in the East. Tocqueville overlooked Indian agents, land agents, and other personnel when he wrote of American administrative functions being split among local and town officials, and when he wrote that "the [national] state has no administrative functionaries of its own, stationed on different points of its territory."[5] More recently, scholars such as Stephen Skowronek, Theda Skocpol, Daniel Carpenter, Richard Bensel, and others have overlooked or minimized the administrative necessities of subduing a continent and its inhabitants, and the requirements of organizing, planning, and controlling the expansion of a new nation's people and industry. Scholars who have glimpsed the more vibrant state active in these years have tended to downplay that state's scope and significance, often surrendering the clear import of their own evidence and reverting to ingrained understandings of the early state as "prebureaucratic," more potential than real. Very few of these scholars have included careful examination of Indian affairs, expansion, or the bureaucracy before the Jacksonian era. Chapter 1 offers an assessment of the literature on state development and the development of public administration, introduces a working definition of big government, and summarizes the contours of big government in the eighteenth- and nineteenth-century United States.

The main sections that follow examine expansion, Indian affairs, and the administrative state in the era of the factory system, the era of Indian removal, and the era of the reservations. Within these sections, chapters focus on three main themes: (1) national authority over a coordinated set of policies to manage expansion and Indian affairs; (2) the broad discretion

[5] Alexis de Tocqueville, *Democracy in America* (New York: Vintage, 1945), vol. 1, 92–3.

given to the executive branch and, in particular, to its field agents, as the preferred means of accomplishing clear but general objectives in a variety of unique and rapidly changing circumstances; and (3) the persistent and sometimes consciously crafted illusion of failure that surrounded, and continues to surround, the administrative activity of the Indian Office in the nineteenth century.

In the first major era of federal Indian policy, national policy and administrative efforts pacified the early frontier through diplomacy and regulations governing land and trade policy. The treaty system organized relations with Indian nations, and helped institutionalize federal government control over land, trade, and diplomacy in service of a coordinated, national effort. The national trading houses, together with a series of licensing and bonding measures, aimed to supervise trade with the Indians and oversee (in some cases eliminate) private traders, thereby limiting opportunities for unscrupulous traders or unauthorized intruders to set off a general conflict. The factory system also aimed to provide Indians with goods at a substantial discount from what the free market might provide, allowing them to trade skins for blankets and other goods – which would not only promote good relations but would help the Indians deal with the diminishment of land and game.

In the second major era of federal Indian policy, the federal government removed more than one hundred thousand Indians from southern states and relocated them on reservations west of the Mississippi River. Removal's roots were planted earlier, at least as far back as the founding era; the heyday in the Jacksonian period saw pressured removals gradually replaced by the use of direct force. And while removals from the Southeast are the most well known, removals took place across the continent and continued throughout the nineteenth and twentieth centuries. Removals were extraordinary administrative undertakings, as we will see, necessitating planning and discretionary decision making by field officers from both the civilian and military wings of the War Department.

In the third major era of Indian affairs, the national government isolated and contained Indian populations on administratively manageable reservations, shrinking reservation lands as Indian defenses weakened. Reservations were intimately tied to the removal policy, and after the height of removal reservations became the centerpiece of U.S. policy toward Native Americans. The point of reservations was to isolate Indian populations in places that were administratively controllable and where administration could be used to further U.S. expansion and development goals. Reservations were important parts of U.S. nation-building, both in areas settled by whites and in U.S. attempts to restructure and reorient native governing and community systems. Beginning in the reservation era and gaining full force in the 1870s, the United States allotted two-thirds of remaining tribal lands to individuals, in an effort to destroy tribal entities as political and social

communities. Allotment, too, is an essentially administrative undertaking, involving surveying, recordkeeping, adjudication of disputes, enforcement of decisions, and so on.

United States expansion to the West never relied solely or even primarily on the military as the foundation of state power and authority. The military played an important role, one often underestimated, but its responsibilities were almost always subordinate to the effort to manage the U.S. expansion through civilian administrative mechanisms. The treaty system, national trade and intercourse laws, and gradual extension of national jurisdiction over frontier areas speak to this effort, borne of the early republic's military weakness and economic instability relative to Indian and European powers and out of a fear that unnecessary conflicts with Indians would jeopardize money, lives, and national security. Moving west by exterminating Indians was at first impractical and always costly, as well as a violation of American founding ideals. From its earliest days, the United States set out to negotiate and sign treaties – however flawed that process was – and to civilize Indians for eventual assimilation – however misguided *that* objective was. Conquest was to be had in battle only if necessary; otherwise, the path of conquest would be laid by federally controlled administrative mechanisms. States delegated policymaking and administrative primacy regarding expansion to the national government. Congress delegated power and discretionary authority to the president and to the executive branch's administrative offices, such as the War Department and, later, the Department of Interior. Agents of these departments designed and implemented Indian policies and administered Indian affairs across the continent with substantial effectiveness in the century and a half before the New Deal.

The wisdom and justice of United States policies toward American Indians are questionable, at best, and in many cases the policies were abominable and their effects tragic. Removals and reservations would today be called ethnic cleansing, and a century of initiatives designed to pacify, remove, and then isolate and contain native populations is a deplorable legacy. It is no less deplorable, and may even be more so, because proponents used the rhetoric of legalism, restraint, and high ideals to justify it. It is an error to see this history as a mistake, though, a failure of a weak state to control its agents and its citizens. Choosing to view the history of Indian policy as inept or tragically corrupt absolves public officials from responsibility for the course of national expansion. To dismiss the Indian Office itself as corrupt or poorly managed is to contribute to the expansion myth and shift responsibility for the horrors of the United States' Indian relations to the vagaries of fortune, luck, and evil men. That myth absolves the representatives and citizens of the United States of blame and responsibility, and overlooks the extensive scope of administrative mechanisms and activity designed and implemented by national officials and federal agents, often working in conjunction with state

and local individuals. Expansion and Indian affairs arose from the careful, planned, and effective actions of reasonable and often well-meaning people. The rapidity and thoroughness with which the federal government pacified, removed, contained, and dispossessed American Indians and tribes across North America is an awesome display of coordinated public administration at the national level.

1

The Myth of Open Wilderness and the Outlines of Big Government

The romantic myth of Western settlement omits the federal government's critical role in promoting and managing expansion and development. The image of an open wilderness, slowly peopled by rugged pioneers who built towns and communities and small businesses independent of the national government, is false. The understanding of "government" and public administration as late entries upon the stage, come to constrain and oppress the individualism and free spirit of the American pioneer, is similarly false. Nevertheless, understanding of the West remains obscure to almost all but historians of the West itself. As a result, the development of government administrative structures to plan and manage westward expansion remains largely hidden.

The North American continent was not open wilderness. The land supported and sustained hundreds of sovereign political communities with millions of people – farmers, traders, and hunters, husbands, wives, and children, living in houses, tepees, and pueblos, and living everywhere from New England to Florida, from the old states of the Southeast to the Ohio Valley, from the Mississippi Valley to Arizona, the Pacific Northwest, California, and along the Great Plains from the Dakotas to Texas. The fact of these communities, and the fact that they were, in many cases, politically and militarily sophisticated enough to threaten the very existence of the United States, is a truer starting point for understanding the development of the national government and its administrative structures.

An open wilderness is easy to conquer – individual pioneers can do it. The myth never requires, and therefore never sees, the extensive activities of the national government. A peopled continent – and a dangerous continent, and a complicated continent – immediately reveals the need for, and presence of, indispensable coordinating activity and administrative structures. Moreover, the constantly changing nature of U.S. relations with diverse American Indian nations – from those nations east of the Mississippi in the years of the early republic, to the Southeastern nations and nations west of

the Mississippi through the early part of the nineteenth century, to completely different cultures, structures, and environments as the United States moved west through Mexico and the Southwest, and then back again to the Dakotas at the close of the nineteenth century – suggests the variety and rapidly shifting nature of political and administrative contexts confronting federal administrators.

Millions of People with Diverse Communities and Interests

The Hollywood version of our history – or the dime novel version, or the James Fenimore Cooper version, for that matter – simplifies Indians and Indian affairs, leaving no need for government, management, and administration. Simple and rare Indians create no great obstacles to U.S. expansion. Thus the mythic view hides the actions of government officials. The reality of the situation in North America quickly suggests that expansion couldn't have been as easy as it looks in the theater.

Persistent stereotypes have hobbled understanding of Indian affairs since the days of Columbus. These stereotypes obscure the size and significance of American Indian populations, the diverse and complicated political interests involved in white–Indian relations, and the humanity of Indian leaders and communities. They also obscure the reasons why government involvement was so essential to the orderly and effective continental expansion of the United States. The stereotypes must be rejected in order to clear a path for understanding the complexity of Indian affairs, and thus the complexity of politics and public administration related to U.S. expansion.[1]

Between 75 million and 112 million people lived in the Americas in 1492; some estimates range as high as 145 million people. Between 12.5 million

[1] See, e.g., Robert F. Berkhofer Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage, 1978); Richard Slotkin, *Regeneration Through Violence: The Mythology of the American Frontier, 1600–1860* (New York: HarperPerennial, 1996 [1973]). For illustration of the staying power of these stereotypes in American culture, see the essays in Peter C. Rollins and John E. O'Connor, eds., *Hollywood's Indian: The Portrayal of the Native American in Film* (Lexington: The University Press of Kentucky, 1998); Carter Jones Meyer and Diana Royer, eds., *Selling the Indian: Commercializing & Appropriating American Indian Cultures* (Tucson: University of Arizona Press, 2001); Ward Churchill, *Fantasies of the Master Race: Literature, Cinema and the Colonization of American Indians* (Monroe, ME: Common Courage Press, 1992). Recent scholarship in Indian affairs law demonstrates how thoroughly (and dangerously) these stereotypes continue to permeate U.S. legal and political decisions. See, e.g., N. Bruce Duthu, *American Indians and the Law* (New York: Viking, 2008); David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001); Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007); Robert A. Williams Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis: University of Minnesota Press, 2005).