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EXECUTIVE DOMAIN

Military Reservations in the Wartime West

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The Second World War didn't end in 1945. That truism is especially true in the US West, the forefront of America's home front, the proving ground for the Atomic Age. It remains apt. Regardless of what happens to the post-1945 and post-1989 international order—an open question after 2016—the United States seems committed to maintaining an action-ready military with nuclear and aerial supremacy. For as long as the nation keeps that commitment, millions of acres of federal land in the US West will remain militarized. These properties—Air Force bombing ranges, Navy gunnery ranges, Army training grounds—have existed in perpetual wartime since the presidency of Franklin Delano Roosevelt.

Some preliminary real estate numbers are in order. By recent count, the US government owns approximately 640 million acres, more than one-quarter the nation's landmass. This acreage is overwhelmingly located in the far western states, including Alaska. Four agencies explicitly manage federal lands: the US Forest Service, the US Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management (BLM). But there is a fifth major landlord, one that doesn't have a land management mission—the Department of Defense (DoD). Of the DoD's twenty-five million total acres of "base structure," roughly sixteen million are federal lands in the US West. This aggregate area, larger than West Virginia, is spread across the Great Basin Desert, the Mojave Desert, the Sonoran Desert, and the Chihuahuan Desert. The top four military states, in terms of acreage, are, in order, New Mexico, Nevada, California, and Utah. Each

of the three largest base complexes—White Sands Missile Range, the Nevada Test and Training Range, and the Utah Test and Training Range—meets the obligatory "larger than Rhode Island" standard. In Utah the DoD's total acreage exceeds the combined acreage of the "Mighty 5" national parks (Arches, Bryce, Canyonlands, Capitol Reef, and Zion) for which the Beehive State is renowned around the world.[1]

Since the 1970s, antiwar activists have deployed a charged phrase to describe military reservations in the western deserts: "national sacrifice areas." That classification is too simple. Militarized landscapes like White Sands are wasted *and* wild, contaminated *and* conserved, emptied *and* populated, remote *and* developed. Desert bases constitute tax bases for local and state governments, employing large numbers of workers in private and governmental sectors. Adding to the complexity, most of the restricted land in the arid US West "owned" by the DoD is technically on loan from the Department of the Interior. As historian Brandon Davis has argued, "Nearly all aspects of America's condition of permanent war are predicated on the military's ongoing occupation of public land." In the language of federal law, such land is *withdrawn*. Although Congress during the Cold War placed constraints on future nonemergency land withdrawals, it condoned and effectively permanentized the withdrawals executed during World War II.[2]

Across the arid West, then, the legal year remains 1941. Or maybe the time is 1940—or 1939? As historian Mary Dudziak has shown, it's impossible to say when exactly peacetime became wartime during the administration of FDR.[3] Surely it was well before the attack on Pearl Harbor, December 7, 1941, and the congressional declaration of war the next day. One can point to Army appropriation bills, or the Selective Training and Service Act of 1940, or the Lend-Lease Act, signed on March 11, 1941, or various executive actions that nudged the United States away from neutrality—a process constitutional scholar Edward Corwin called the "war before the war."[4] For example, days after Germany invaded Poland in September 1939, FDR proclaimed a "limited" national emergency without clarifying any limitations.[5] For good measure, on May 27, 1941, six months *before* Pearl Harbor, FDR issued a sweeping new proclamation: "An unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defenses be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere."[6] The White House understood the utility of emergencies: they permit deliberate preparation as well as hurried action.[7]

As a historian of the Great Basin, I want to call attention to another temporal marker on the continuum of peacetime to wartime, a moment that never appears in timelines of World War II, a day that does not live in infamy: October 29, 1940. On that date, FDR signed a pair of executive orders withdrawing 3.6 million acres of public land in southern Nevada and 1.6 million more in western Utah. The acreage was reserved for an unspecified period for the War Department's use as aerial bombing and gunnery ranges.[8] For his authority Roosevelt somewhat dubiously cited the Army Appropriations Act of 1918, which had granted the president the power to reserve land for "aviation stations, balloon schools, [and] fields for testing and experimental work."[9] Coming just after the onset of the London Blitz, FDR's pair of executive orders were, on the one hand, extraordinary proto-wartime acts. On the other hand, they were ordinary and un-newsworthy because they superficially resembled any number of previous western land withdrawals for nature reserves. Indeed, part of the Nevada bombing range had previously been reserved by FDR as the Desert Game Range (now the Desert National Wildlife Refuge).[10]

The sudden strategic importance of the Great Basin was a stunning role reversal. The playas of Nevada and Utah had long served as the US settler state's definition of "wasted": unused, unusable, uninhabited.[11] Thanks to World War II, the Great Basin's inarable void was finally "reclaimed"—not by the Bureau of Reclamation but the Department of War, not by plowshares but swords. In the language of military planners, the "natural endowments" of the desert had utility in war.

"War is in fact the true nurse of executive aggrandizement," warned James Madison during the first term of the first president. "In war the public treasures are to be unlocked, and it is the executive hand which is to dispense them."[12] Applied to the Great Basin during World War II, Madison's maxim holds true, albeit with an inversion. The executive could unilaterally *lock up* public lands in the western deserts precisely because they had been untreasurable. But the premise that the Great Basin was vacant, and therefore public, and thereby available to militarization, was a historical and legal fiction made possible by violence. When FDR withdrew the lands that would become the test-and-training ranges in Nevada and Utah, he encroached upon Numic territory whose title had never been extinguished. Treaties of "peace and friendship" signed during the Civil War, later ratified by the US Senate, recognized Western Shoshone and Goshute claims to tens of million acres. The signatories authorized the executive to establish military posts on Numic land and to create reservations

for tribal use. Presidents would go on to exercise the former power maximally, the latter power minimally. Thus the "empty land" available for World War II militarization was *emptied* land—the spoils of attacks on indigenous sovereignty.

The histories of US expansionism, conservation, and militarism need to be connected. Over the long nineteenth century, the management of war and the administration of western lands each made the executive more powerful, and during World War II these related realms of power amplified each other exponentially. Expressed in biographical terms, conservation president Theodore Roosevelt bequeathed to war president Franklin Delano Roosevelt the precedent of using executive power to remake the western map with strokes of a pen. As tallied in total reserved acreage, T. R. ranks as the greatest conservationist in US history, while FDR ranks as the greatest militarist. But, of course, Theodore was himself a military expansionist—apologetic historian of the Indian wars, volunteer soldier in Cuba, de facto president of the Philippines. Contemporary Americans who celebrate the creation of nature reservations (national forests, national monuments, national wildlife refuges) by Rooseveltian presidents would do well to consider how the presidential sword cuts both ways. In terms of property law, the sacralization *and* the militarization of the western deserts was foremost the result of executive action. T. R.'s peacetime prerogative offered a template for FDR's wartime power. The latter's expedient role was novel in magnitude rather than kind.

Military historians are unaccustomed to discussing nature reserves in conjunction with military bases. More surprisingly, legal and diplomatic historians have not analyzed military land withdrawals alongside two related terrains of sovereignty: American Indian reservations and US overseas territories.[13] Through a joint reckoning of these extraordinary legal spaces, US Americans can better understand how land and power operate together in national history. In this short history of wartime property in the arid West, I trace two lines—one going temporally backward and spatially westward, another going temporally forward and spatially oceanward. In other words, my regional case study from the Second World War gestures to the founding foreign policy of the United States—relations with American Indians—and its current ambivalent role as warden of global empire.

I. Wartime Preparation

Military land withdrawals during World War II did not come out of nowhere. The original US Congress, through the Articles of Confederation, asserted fed-

eral primacy over unorganized western land, a legal precedent that proved enduring despite political contestation from states. The Constitution reinforced federal ownership through Article IV, Section 3, which states unambiguously: "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

The Property Clause may sound like plenary power for the legislative branch, but it is not. Starting with George Washington, presidents have withdrawn land—excluding it from disposal—for the national interest. The executive's purview over federal properties comes from Article II, which names the president commander in chief and also chief negotiator of treaties. In the republic's first century, president after president made ad hoc land withdrawals as necessitated by foreign policy: war against Indians and diplomacy with Indian nations. War demanded forts for Army soldiers; diplomacy demanded reservations for tribes. In addition, presidents strategically reserved waterfalls for power sites, peninsulas for lighthouses, timber stands for naval ship masts, and lead deposits for munitions. Congress occasionally provided statutory authority for such actions, but mainly acquiesced to executive action, thus interpreting separation of powers through practice. Property powers, like war and military powers, are in practice held concurrently, not exclusively.

Over the long nineteenth century the federal government increased its landed authority through new roles: arbiter of competing private land claims; purchaser and conqueror of trans-Mississippi territories; and owner-in-trust of tribal reservations.[14] Complexities notwithstanding, the guiding principle of federal land policy in the long nineteenth century was expropriation and disposal. The best demonstration of the government's property powers was the disposal of so much land. The state worked to extinguish Indian title, then alienate that "public domain" (minus any reservations) to private owners through congressionally approved methods like auction, land scrip, land bounty, land granting, and homesteading. "Public" was meant to be a transitory state.

By the 1890s momentum to privatize the public domain slowed for two main reasons. First, not enough homesteaders could be enticed to make claims on inarable land throughout the mountainous and arid Far West. Second, more and more conservationists argued for government stewardship of timber and water supplies, and sites of outstanding scenery and wildlife. Congress gave new statutory powers to the executive to prevent certain uses (i.e., *withdrawing*) and to prioritize certain uses (i.e., *reserving*). A congressional act of 1891 included a sentence that allowed the president to reserve "any part of the public lands

wholly or in part covered with timber or undergrowth."[15] Grover Cleveland and Theodore Roosevelt flexed this authority to create the national forest system, despite the objections of western newspapers, business interests, and senators. When Congress passed the Antiquities Act of 1906, western senators felt mollified that this new withdrawal authority applied to "the smallest area compatible with proper care and management" of "objects of historic or scientific or interest."[16] Designed to safeguard ancestral Puebloan ruins in the Southwest, the Antiquities Act was almost immediately used by Roosevelt to withdraw and reserve over eight hundred thousand acres at the Grand Canyon—a precedent-making power grab subsequently affirmed by the Supreme Court.[17]

Of equal legal consequence, Roosevelt created a new class of game reserves using neither statutory authority nor the implied authority derived from the presidential realm of foreign relations. Although T. R. didn't care much about Indian reservations—most of which were, at the time, being pulverized through privatization—he worried about reservations for America's migratory birds. In 1903 he created the first of dozens of national wildlife refuges, citing no authority but his own. Through words and deeds (such as the second Public Lands Commission), Roosevelt asserted a general stewardship role for the presidency that rose to the level of the national interest, like war and diplomacy. "I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it," he recalled. "My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws."[18]

His successor, William Howard Taft, acted with greater circumspection. In 1909, Taft made a temporary withdrawal of 3.6 million acres of oil and gas land in Wyoming and California, concerned that a key fuel source for the Navy would fall into private hands. The Mining Act of 1872 had not anticipated the problem of fossil fuels. Roosevelt had reserved tens of millions of acres of coal lands until a leasing system could be established, and now Taft wanted to do likewise with oil reserves. However, the White House doubted the legality of its withdrawals, and so sent a message to Congress in 1910 asking for clarification of executive authority.

The resulting General Withdrawal Act of 1910—better known as the "Pickett Act"—was meant to reassert congressional supremacy over western land and to contain future action by the executive. The Pickett Act permitted the president to "temporarily" withdraw lands from sale and entry and to reserve them for

"public purposes." Withdrawn lands would remain open to "metalliferous" (i.e., hardrock) mining claims; the power to restrict all mining seemed excessive, even to conservationists. Legislators skirted the legality of Taft's oil reserves and all other prior withdrawals, leaving that issue to the courts. The Pickett Act stipulated that new reservations would remain in force until revoked, suggesting the possibility of an indefinite term. Floor debate indicated that Congress intended a short time frame, several years at most. However, by not explicitly defining "temporarily," conservationists in Congress created a legal gray area that would be exploited by future presidents. An act meant to check executive power would in the long run serve to magnify it.[19]

In the meantime, Taft's oil withdrawals had their day in court, resulting in a Supreme Court decision in 1915. *United States v. Midwest Oil* marked a victory for Hamiltonians in government. The court majority arrived at the opinion that President Taft's action, though not empowered by statute, was legal. The justices provided historical evidence that the executive had, without express authority, withdrawn federal land hundreds of times, going back to the earliest period of US government, with occasional specific support of Supreme Court rulings and attorney general opinions. Interior Secretary Henry M. Teller in 1881 had described "an existing undisputed power too well settled ever to be disputed." As of 1915, the Court enumerated 99 Indian reservations, 109 military reservations or accessory sites, and 44 bird refuges. Such withdrawals were, according to the justices, acts of exigency for the public weal (*existe ex necessitate rei*). Given that the legislative branch had never repudiated such executive actions, the Court derived a textbook formulation: "Its silence was acquiescence. Its acquiescence was equivalent to consent to continue the practice until the power was revoked by some subsequent action by Congress."[20]

U.S. v. Midwest did not technically contradict the Pickett Act. Whereas the Court ruled retrospectively, Congress had acted prospectively. Commonsense legal and historical reasoning provided a straightforward harmonization: in 1910 a constitutionally implied power had been revoked and replaced by a more limited congressionally delegated power. Nonetheless, an alternative legal interpretation remained open. For apologists of executive authority, the "acquiescence doctrine" articulated by the Supreme Court was a historical gift that could keep on giving. After 1915 an activist president could unilaterally exercise any number of unenumerated powers and, unless specifically reprimanded by Congress, claim post-facto legal authority for those actions based on the precedent established by *Midwest Oil*.

Franklin Delano Roosevelt, no less than his predecessor Theodore Roosevelt, used western land conservation to expand the scope of the US presidency. On November 26, 1934, with dust storms in the news, FDR exercised the authority of the Pickett Act to an incredible magnitude, temporarily withdrawing all the "vacant, unreserved and unappropriated" land in the twelve western states.[21] This one executive order affected eighty million acres and complemented the recently passed Taylor Grazing Act, officially "an Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration." In a process known as "classification," Interior Department officials would determine the "most useful purpose" of each section of all this unbought and unreserved land, with the expectation that most of it would be leasable for grazing, albeit under new regulations. The Taylor Grazing Act and FDR's associated mega-withdrawal (raised to 142 million acres in a subsequent order) were governmental admissions that the post–Civil War project to alienate the western public domain to homesteaders had sputtered long before all the available property had been privatized. Moving halfway from a policy of land disposal to a policy of land retention, the government created a custodial agency, the Grazing Service, to manage the leasable districts. Henceforth, the term "public land" generally referred to such leftover acreage—not forest land, not park land, not refuge land. Most of this public land was in the Great Basin and other western deserts.[22]

In land policy as in most realms, presidential power begets more power. By the end of its second term, the FDR administration asserted its right to withdraw public land permanently and absolutely—including the nullification of mining laws that appertained—something disallowed under an impartial reading of the Pickett Act. The executive might have asked Congress for such power; instead, it pursued the matter internally, and thus conservation bled into war. The legal test case was seemingly innocuous, being related to the conservation goals of the Taylor Grazing Act. The Interior Department requested that the Justice Department approve an "absolute" withdrawal in eastern Oregon for a Grazing Service experiment station used by range scientists at Oregon State University. Knowing that this local application of maximal power would have profound implications for presidential prerogative, Attorney General Robert H. Jackson reviewed the legal material with care and in July 1940 wrote an opinion that rejected the proposed executive order.

Before the opinion could be published, objections rolled in. The Navy judge advocate and the secretary of war each communicated to Jackson, requesting a reversal. Clearly this matter transcended rangeland science. Henry L. Stimson

put it bluntly: The military desired "free and unrestricted use of its reservations" without possible "embarrassment and inconvenience" of mining claims. Secretary of the Interior Harold L. Ickes, a maximalist and interventionist in every sense, objected to Jackson's opinion in a long, lawyerly memorandum. Ickes argued that the president enjoyed not one but *two* legal authorities: (1) statutory power given in 1910 by Congress to temporarily withdraw land, excluding hardrock mining rights; and (2) residual implied power affirmed in 1915 by the Supreme Court to indefinitely or even permanently withdraw land, including all mining rights. In Ickes's view, the three hundred or so nonstatutory land withdrawals executed since the Pickett Act without subsequent contestation by Congress had demonstrated the "presumed inherent general withdrawal power" in the presidency. The executive possessed such power because people acted in the belief that such power existed. For legal ammunition, Ickes creatively mined *Ozawa v. United States* (1922), in which the Supreme Court had cited "legislative acquiescence" to the "popular" definition of "white person," regardless of original statutory intent. "In any event," concluded Ickes, "30 years of repeated and consistent administrative practice are eloquently persuasive."[23]

Jackson initially stood his ground, communicating in April 1941 that he felt "constrained to adhere" to his opinion. Soon enough he caved to partisan pressure, including pushback from his own Office of Solicitor General. In June, days after FDR had declared an unlimited national emergency, Jackson buried his actual opinion—never published and not made public until 1968—and issued an antithetical one for the record. In the published opinion, Jackson did not reference *Ozawa*, nor did he mention any military ramifications, sticking to the narrow question at hand. Grasping for legal precedent, the attorney general quoted from a predecessor's 1930 opinion that the ad hoc national wildlife refuge system had been allowed by the Pickett Act, even though no specific reservation authority had been enumerated by Congress.[24] This logic may have pained Jackson. A decade later, from his seat on the Supreme Court, he would vote to curtail presidential seizure power in the landmark case *Youngstown Sheet & Tube Co. v. Sawyer* (1952). In his influential concurring opinion, Justice Jackson described the "zone of twilight" between express and implied authority that could be exploited by activist presidents. He did not reveal his own murky history of widening the twilight zone.[25]

Read in isolation, the June 1941 opinion and resulting executive order about Squaw Butte Experimental Station seem wholly unrelated to the conduct of war. But context means everything. As published, Jackson's party-line opinion was

expedient because the White House had, starting in 1940, begun withdrawing public land for the indefinite use of the War Department using the absolutist language "including the mining laws." Jackson thus provided legal cover for a domestic, territorial expression of wartime before any declaration of war.

On December 8, 1941, by signing the congressional declaration of war against Japan, FDR unlocked maximal Constitutional powers. In regard to public lands, however, the change was apparent in speed, not size or kind. In early 1942, after the secret authorization of the Manhattan Project, the White House approved another pair of large withdrawals as part of a fast stream of land orders. First, FDR reserved 1.2 million acres in New Mexico—Alamogordo Bombing and Gunnery Range, the precursor of White Sands Missile Range—again claiming statutory authority from 1918. The boundaries of the "general bombing range" included private property (3 percent of the total acreage) and New Mexico state property (21 percent), not to mention public land under grazing lease by local ranchers, plus White Sands National Monument, previously reserved by Herbert Hoover. Roosevelt's order included a vague promise that affected public lands would be returned to the administration of the Interior Department "when they are no longer needed for the purpose for which they are reserved."[26] White House lawyers appended the same boilerplate language to another order the next month that created a chemical warfare range in Utah adjacent to the big bombing range. For this wartime act Roosevelt simply invoked "the authority vested in me as President."[27]

As the war escalated in 1942, the White House decided to relieve the president of the burden of processing military requests for land withdrawals. By means of another executive order, FDR delegated authority to the Secretary of the Interior, formalizing an interpersonal power dynamic with Ickes that had been established before the war.[28] Unlike Theodore Roosevelt, FDR did not take great personal interest in western lands and generally deferred to Ickes, who had turned Interior into his empire. After April 1942 public land orders from the office of Ickes served in lieu of executive orders. One year later, FDR extended Ickes's purview to properties newly acquired by the federal government (in addition to unpatented public land).[29] Step by step, the interior secretary had become the third most important member of the military cabinet after the secretaries of war and Navy.

Even after the formal entry into war, absolute withdrawal remained the fastest, easiest way for the military to gain full control of public land, but it was hardly the only available land acquisition method. Consider the history of

Japanese-American detention. Once the War Department declared the West Coast a military exclusion zone, this vast exclosure demanded multiple small enclosures—"reception centers" and "relocation centers," to use the euphemisms of the time. For its ten main carceral camps, the War Relocation Authority relied on four land acquisition methods. In Arizona the Department of the Interior relinquished Indian reservation land to the War Department through memoranda of understanding. In one case (Poston), members of the Colorado River Indian Tribes objected to uncompensated taking of their trust land; in the other case (Gila River), the Pima tribe received nominal lease payments. The second acquisition method was an interagency memorandum of understanding. At Tule Lake (California), Minidoka (Idaho), and Heart Mountain (Wyoming), the Bureau of Reclamation agreed to lease public lands previously reserved for irrigation projects. For the two camps in Arkansas (Jerome and Rohwer), the Farm Security Administration, a branch of the US Department of Agriculture, agreed to similar leases. The third method, purchasing private land through the US Army Corps of Engineers, was used at Granada (Colorado) and Topaz (Utah). The fourth method was condemnation as empowered by the Second War Powers Act of 1942. At Manzanar (California) the federal government seized land owned by the City of Los Angeles.[30]

The Manhattan Project, authorized in early 1942, demanded its own western land acquisitions. At Hanford the government used the Second War Powers Act to acquire private land through condemnation and purchase. For the project's research center, the military decided to go through the National Forest Service because its land had already been reserved from public entry. To gain exclusive access to the property that became Los Alamos, Henry L. Stimson simply sent a letter to the secretary of agriculture asking permission to occupy the Pajarito Plateau "for so long as the military necessity continues." The small private inholdings within the boundaries of the so-called "demolition range" were then condemned through the Second War Powers Act. Because Hanford and Los Alamos did not involve any "public land"—that is, residual public domain administered by the Grazing Service—their post-1945 transition to Cold War permanence would be straightforward.[31]

Military land acquisition was not geographically restricted to western states. At the height of World War II the War and Navy departments had access to 52.7 million acres, compared to 2.6 million in 1940. Of the wartime total, 33 million acres were already federally owned or administered. Of that subtotal, the military gained partial use of roughly 20 million acres through temporary

special-use permits and full use of roughly 13 million through indefinite public land withdrawals. The remaining 17 million acres largely came from private property in eastern and southern states, where the military displaced—through lease, purchase, or condemnation—tens of thousands of farm families. In the South the military built on earlier New Deal programs of retiring submarginal agricultural land from production.[32]

In western states military operations affected seasonal grazing more than year-round farming. In South Dakota the Oglala Sioux watched in helpless anger when the Interior Department, which managed the Pine Ridge Indian Reservation in trust, gave nearly nine hundred thousand acres of "badlands" to the War Department for an aerial and gunnery range.[33] Compared to Lakotas on reservation land, white ranchers on public land had somewhat greater political voice. In Utah and Nevada local stock growers registered their irritation when their grazing leases were suspended by the War Department. In 1942, Congress amended the Taylor Grazing Act to stipulate that losses resulting from cancellations of leases due to military land withdrawals would be compensated to a "fair and reasonable" degree.[34] In New Mexico, meanwhile, many private ranch owners resisted the condemnation orders that followed the designation of the Alamogordo Gunnery and Bombing Range.[35]

During the war, Senator Pat McCarran of Nevada presided over a series of hearings about the administration and use of public lands, giving white rural westerners opportunities to vent about the Taylor Grazing Act, eastern bureaucrats, and executive overreach. McCarran was a model powerbroker for the wartime West. Out of one side of his mouth he defended the customary rights of freedom-loving ranchers against the tyranny of big government; out of the other he sweet-talked the military to make sure Nevada got as many bases and government jobs as possible. In similar fashion Utah's elected leaders welcomed the War Department even as they castigated the Interior Department. As part of the McCarran hearings, the Beehive State's delegation helped prepare a Senate report in 1945. The Utahns blasted the feds for one withdrawal in the Uintah Basin that benefitted Ute Indians and inconvenienced Mormon graziers; and another near Moab—potash-rich lands reserved for a National Fertilizer Program—that shut out prospectors and miners.

These two temporary withdrawals—with their New Deal connections to the Bureau of Indian Affairs, the Grazing Service, and the Soil and Conservation Service—enraged the leadership of Utah. Politicians stoked fears of an impending socialistic takeover of southern Utah by the National Park Service that

would remove public land from "beneficial use." Military land withdrawals in western Utah, which generated thousands of defense jobs, elicited no such anti–New Deal alarm. Besides, in 1945 any criticism of defense facilities would have seemed unpatriotic. While the McCarran committee exhorted Congress to recapture public land withdrawal, to restore the meaning of the Pickett Act, and to curtail the abuses of executive authority, it softened its tone in reference to military lands: "Obviously, the job has had to be done hurriedly and by a large number of officers and employees, most of whom were new to undertakings of this kind."[36]

II. Wartime Continuation

The planning for post–World War II land use in the US West began at a time when the Cold War and the national security state were not yet inevitable. In February 1945, anticipating the end of hostilities, FDR issued a proclamation that amended fifty-four executive orders and fifty-nine public land orders.[37] President Roosevelt declared that six months following the termination of the unlimited national emergency, thirteen million acres of public lands would return to their former jurisdictions, though remain withdrawn until otherwise ordered. This proclamation implied that absolute withdrawals for military use had been emergency actions made in a moment of exception, and hinted that wide application of Robert H. Jackson's published opinion might not bear legal scrutiny. Roosevelt's proclamation even applied to the big bombing ranges in Utah, Nevada, and New Mexico reserved under the presumptive authority of the Army Appropriations Act of 1918. Even more remarkably, the affected withdrawals stretched back in time to spring 1939—a tacit admission that the nation had entered wartime, or at least martial time, before Hitler's blitzkrieg, and even before FDR's limited national emergency.

Whatever Roosevelt's personal intentions, "peacetime" or "normal time" was not forthcoming in 1945, due to the death of the president, the onset of the atomic age, and the deterioration of US-Soviet relations. During Harry S. Truman's years in office, the White House, the military, and both parties in Congress struggled to find a balance between national security and the social contract.[38] This awkward balancing act resulted in congressional laws that both contained and normalized militarism: the Atomic Energy Act of 1946 transferred the military's Manhattan Project to the civilian Atomic Energy Commission (AEC); the National Security Act of 1947 established the DoD and

the Central Intelligence Agency (CIA); and the Selective Service Act of 1948 instituted the modern draft system.

In these changed circumstances, the DoD had no incentive to let go of World War II land withdrawals. A standing military needed a standing dominion. Congress helpfully amended the Taylor Grazing Act in 1948 to allow the cancellation of grazing permits on public lands needed for "war *or national defense* purposes."[39] With those three words, wartime on the range could continue beyond (or without) any specific war. As of the Korean War, the Pentagon controlled approximately twelve million of the thirteen million acres withdrawn by FDR. At the fine level, many small changes had occurred since the surrender of Japan: bases deactivated or reactivated; lands transferred from the Army to the Navy; boundaries adjusted; mining claims revoked; grazing rights suspended or canceled or liquidated; and so on. For example, in 1950 the acting secretary of the interior, claiming no specific authority, withdrew Dugway Proving Ground at twice the size (279,000 acres) for continuation of the Army's chemical weapons program.[40] Further expansions followed, leading to financial losses for the Deseret Live Stock Company, Utah's largest sheep operation. In Nevada the AEC initiated nuclear testing in 1951, building on prior tests at Bikini Atoll.

Because of the race to nuclear armament—including hydrogen bombs—FDR's unlimited emergency continued long after VJ Day. In spring 1952 the Senate ratified the Treaty of Peace with Japan, and Truman used this opportunity to end his predecessor's limited *and* unlimited emergencies. However, his termination order specifically exempted his own 1950 proclamation that the threat of "world conquest by communist imperialism" had created a *new* national emergency "requiring that the military, naval, air, and civilian defenses of this country to be strengthened as speedily as possible."[41] In other words, all three concurrent emergency orders had been in effect when the United States entered the Korean War without a war declaration from Congress. Truman's residual anticommunist national emergency would remain active through the 1970s.

Nonetheless, when Truman terminated FDR's pair of emergencies, a countdown began. In one-half year, public land withdrawn during World War II was set to revert to the jurisdiction of the Interior Department. Six months later, October 28, 1952, nothing changed. The demilitarization of the public domain did not happen—by design. In May, Truman had signed an executive order delegating to the secretary of the interior not just the power to withdraw land, but to modify existing withdrawals. Truman cited the authority of the Pickett Act—that is, Robert H. Jackson's wartime interpretation of the act. A

Progressive Era conservation bill meant to restrict the president to limited, temporary withdrawals now allowed the continuation of absolute withdrawals. Truman's order also authorized the interior secretary to "redelegate" the power of withdrawal to his assistants.[42] Congress acquiesced to the bureaucratization of national security. In August the legislative branch passed a bill permitting the president to grant executive powers to agency-level heads.[43] With multiple layers of legal cover, the Interior Department on October 27 sent subcabinet correspondence to the Pentagon, permitting the military to continue its occupation of public lands "for an indefinite period" beyond the following day's deadline.[44]

In New Mexico and Nevada, at the two largest World War II reservations, the Truman administration additionally made specific moves to facilitate the status shift from transience to continuance to permanence. In 1952, through a new public land order, 2.4 million acres in New Mexico's Tularosa Basin, double the size of the original Alamogordo Bombing and Gunnery Range, was withdrawn indefinitely and reserved specifically for use of the Department of the Army. The Army redoubled its efforts to suspend remaining grazing leases and condemn remaining inholdings (a coercive process portrayed in Edward Abbey's 1962 antistatist cowboy novel *Fire on the Mountain*). The Army had been testing long-range missiles in New Mexico since 1945, starting with V-2 rockets seized from the Nazis. When the executive rewithdrew the Tularosa Basin for the soon-to-be-renamed White Sands Proving Ground, it could no longer claim to be reserving an "aviation station." Instead, the public land order simply cited the all-purpose authority of the Pickett Act.[45]

Similarly, in Nevada a large portion of the Las Vegas Bombing and Gunnery Range was repurposed into the Nevada Proving Ground—actually first, legally second. Back in December 1950, President Truman had approved the selection of southern Nevada as the "continental test site" for atomic weapons. The AEC selection committee had considered it mandatory—for reasons of efficiency, security, and public relations—that the site be "available," by which it meant already under military control.[46] In 1952, more than a year *after* nuclear testing had commenced, the secretary of the interior, through a simple public land order, transferred some 435,000 acres from the management of the Air Force to the AEC.[47]

The militarization of the arid West peaked during the presidency of Dwight D. Eisenhower, former five-star general. In 1953 the secretary of the interior signed a public land order creating a new cluster of Navy bombing ranges in central Nevada.[48] In 1955 the president personally set aside a top-secret base in

southern Nevada—called Groom Lake, or Paradise Ranch, or Area 51—for the CIA's U-2 program. Officially, this test-and-training base did not exist. To this day, it remains absent from the National Map. According to a recently declassified history, Eisenhower reserved this "strip of wasteland" as an extension of the Nevada Proving Ground without the legal nicety of a public land order.[49] Later that year, Eisenhower reserved the air above the entire test area under the clear authority of the Air Commerce Act of 1926, which allowed the executive to create "airspace reservations" for national defense. Once the vertical space was legally withdrawn, the legality of the land withdrawals beneath it was a moot point—if all the warning signs, fences, and security checkpoints weren't sufficient already.[50]

Emboldened, the Pentagon made new plans. In 1955 the DoD requested thirteen million *additional* acres from the Department of the Interior. This imminent doubling of military land withdrawals came to the attention of California representative Clair Engle, Democratic chairman of the House Committee on Interior and Insular Affairs, who requested a pause from the interior secretary pending congressional research. After years of consent or silent acquiescence, the legislative branch decided to revisit the executive's property powers.

The facts obtained by Engle's committee were staggering. As of 1956, the Army, Air Force, and Navy controlled 27.6 million acres nationwide. As Engle liked to say, that was equivalent to a strip of land 14.5 miles wide from San Francisco to New York City. Of this total, 16.9 million acres (more than 60 percent) were public land withdrawals. The Air Force controlled most of this subtotal, 14.4 million acres. Speaking to Congress, Engle described the procedure of military capture: "The Air Force would simply make out a slip of paper . . . asking for an area perhaps 100 miles long and 50 miles wide, and send it over to the Secretary of the Interior saying it was absolutely necessary to their operations, and that area was set aside for those military operations and put into what could be regarded as a legal icebox."[51] When called before Engle to testify, an Air Force official confirmed: "We have never had a turndown." The Air Force even admitted that "five-million-some-odd acres" were in excess of its needs for bombing and gunnery ranges. Even so, it wanted to keep almost all this "excess" for other purposes, including unknown future purposes. During hearings, military officials emphasized how the intercabinet withdrawal process allowed for flexibility in a time of rapidly changing military technology. The arms race required constant adaptation, they said. A gunnery range today might

not serve the needs of guided missiles tomorrow. A cushion of land boosted national security.[52]

Coming before Eisenhower's 1961 farewell warning about the "military-industrial complex," Engle's hearings received perfunctory interior-page coverage in the *Washington Post* and *New York Times*. There was no national constituency for BLM lands. Tellingly, when Engle wrote an opinion piece, his best available audience was the membership of the National Parks Conservation Association. *National Parks Magazine* was an odd fit, for Engle was less concerned about scenery and wildlife than about miners and hunters being "locked out." Using language familiar to white rural westerners, Engle decried how "land hogs" in the DoD had "grabbed" western land.[53] Engle's committee spent an inordinate amount of time investigating alleged hunting abuses by military officers. Sounding not unlike commoners protesting the gentry's privilege to hunt in the forest, committee members reprimanded the military for allegedly creating private game reserves—"lands without law"—where high brass could take weekend junkets to slaughter trophy bucks at will. The committee also worried that the military would arrogate the riparian water rights of rural westerners. Most of all, Engle hoped to reassert Congress's Article IV authority over public lands. He wanted to break the habit of acquiescence that had followed the attorney general's opinion of 1941.

The legislative result was a partial success, which is to say a partial failure. As signed by Eisenhower, the Defense Withdrawal Act of 1958—subsequently known as the "Engle Act"—was the biggest check on presidential property powers since 1910.[54] It thus represented a small but noteworthy corrective to the "constitutional dictatorship" or the "imperial presidency."[55] Henceforth, any absolute withdrawal for national defense purposes that exceeded five thousand acres required approval from Congress. But the law had only one side of teeth. Its statutory purview was prospective, not retroactive. It specifically exempted all the expired World War II "emergency" withdrawals that remained in military use with the concurrence of the Department of the Interior. One BLM official explained to the committee this version of limbo: "The use of those lands so far as the terms of the public land order are concerned are void now, that is, the order is not in effect as to the military use. But the lands remain withdrawn."[56] Engle's investigation left unresolved the issue of "vertical needs" for airspace, restricting itself to the "horizontal" question of military use requirements.[57] For new withdrawals the bill required the Pentagon to specify a period but did not set a temporal limit. Moreover, the law became void in future "times of war or

national emergency." Even as western lawmakers tried to correct the excesses of wartime, they could barely think beyond the temporality of war.

A historian interested in narrating failure can point to instances in the late twentieth century when state national guards—not covered by the Engle Act—avoided legal scrutiny on requested land withdrawals, or when the US military attempted to circumvent Congress by claiming exemptions on land co-used with state guards.[58] Other times, the military simply ignored the law. For example, in 1978 the Air Force added a buffer zone to Area 51 by restricting access to an adjacent mountain range in the public domain. Las Vegas Representative Harry Reid objected, as did Governor Richard Bryan, who declared: "The day is past when the federal government can look at Nevada . . . as an unpopulated wasteland to be cordoned off for whatever national purpose seems to require it."[59] The Air Force responded by preparing an after-the-fact environmental impact statement, then asking the Hill for a formal withdrawal, which Congress duly provided in 1988.

The Engle Act was neither by design nor effect an anti-militaristic measure. The well-publicized 1980 cancellation of the MX missile program (including a proposed mega-withdrawal in Utah and Nevada) belied the post-Engle militarization of the Great Basin.[60] In particular, the Air Force increased its use of airspace for low-level and supersonic test flights. Chuck Yeager bragged about it in his bestselling autobiography: "You feel so lucky, so blessed to be a fighter pilot. Nearly one hundred of us are testing our skill and courage by leaving prop marks on the dirt roads, stampeding grazing cattle (a few angry ranchers even take pot shots at us), and raising the shingles off ranch houses."[61] The same kind of coalition that worked against the MX—ranchers, sagebrush rebels, outdoor recreationists, urban environmentalists, Native Americans—could not stop the Air Force from obtaining Saylor Creek Bombing Range in southwestern Idaho via congressional withdrawal in 1999. Today, more than half the "vertical" Great Basin is designated by the Federal Aviation Administration as restricted areas or military operations areas—airspace designations that have terrestrial effects on land use and wildlife.[62]

Even so, the Engle Act can be narrated as a success, for it anticipated a series of congressional land policies in the 1960s and 1970s: the Classification and Multiple Use Act (1964), the Public Land Law Review Commission Act (1964), the Public Land Sale Act (1964), the Wilderness Act (1964), and the landmark Federal Land Management and Policy Act of 1976 (FLPMA). Taken together, these laws determined that the federal government would permanently retain

a vast public domain to be managed by the BLM under a "multiple use" mandate—though some portions would be sold off for future urban growth, and other portions would be studied for possible inclusion in the national wilderness system, outside the traditional meaning of "use." FLPMA also reasserted congressional authority over withdrawals, repealing the Pickett Act and repudiating *Midwest Oil*. Building on the Engle Act, FLPMA authorized the executive to administratively execute withdrawals smaller than five thousand acres, while demanding congressional approval for anything larger, with a twenty-year limit.

To harmonize the Engle Act with FLPMA and the key environmental laws of the 1970s, Congress passed the Military Land Withdrawal Act (MLWA) in 1986.[63] At that point, six large military bases contained public land in the legal gray area, including two bases dating to the Second World War: Nellis Air Force Range in Nevada (2.9 million acres) and Barry M. Goldwater Air Force Range in Arizona (2.6 million acres). Nellis could not be grandfathered in like the Utah Test and Training Range because its boundaries had been adjusted so many times after the war, including a formal takeover of one third of the overlapping Desert National Wildlife Refuge. The MLWA withdrew Nellis and Goldwater for fifteen years, stipulating cooperative management with federal and state natural resource agencies, and requiring input from citizen stakeholders. However, when Congress proactively reauthorized the six bases in 1999, Republican Senator John McCain of Arizona inserted language that exempted the Goldwater range from comanagement, transferring jurisdiction to the DoD. McCain also sought an indefinite withdrawal for the bombing range. In the end, he settled for twenty-five years instead of a renewal of the original fifteen.[64]

By 2016–17, Republicans in Congress had completed a full retreat from the spirit of the Engle Act. In the name of efficiency, Representative Rob Bishop of Utah, who occupied Clair Engle's former committee chair, quietly proposed jurisdictional transfer of the other five bases covered under the MLWA, plus permanent withdrawal. After the Obama administration expressed opposition to the bill, Bishop inserted similar language into the House version of the annual National Defense Authorization Act.[65] Although Bishop failed to get his complete wish list into the final bill, signed by President Obama in December 2016, he succeeded in enlarging the Utah Test and Training Range, adding 700,000 acres to FDR's withdrawal of 1940.[66] Local environmentalists decried this "land grab," but their opposition barely made local news, much less national news.

For his part, Bishop expressed his outrage over the "land grabs" of Presidents

Obama and Clinton, each of whom had reserved a large national monument in southern Utah. After Donald J. Trump stormed into the White House in 2017, Bishop and his Republican colleagues from Utah formally asked the forty-fifth president to rescind Bears Ears National Monument (2016) and shrink Grand Staircase–Escalante National Monument (1996), despite no statutory authority for such abrogations. Within his first one hundred days in office, Trump obligingly ordered a deauthorization review of all national monuments over one hundred thousand acres created in the previous twenty years. Standing next to Utah's highest-ranking leaders, Trump incongruously bragged that he had just signed "a new executive order to end another egregious abuse of federal power" and feigned anger at the executive's "abusive practice" and "unlimited power" to "lock up" land. Strikingly, Bears Ears National Monument had been supported by a multistate consortium of tribal nations. In his comments about this "massive federal land grab," Trump did not use the term *public land*, preferring "our land," leaving it to the listener to decide the identity of the "we" in "our."[67]

From an "America First" perspective, the public domain is a strategic reserve—of fossil fuel, and of deployable space. In a future national emergency a president could unilaterally withdraw additional acreage. This is specifically allowed under the Engle Act and FLPMA, though the White House must now abide by the National Emergencies Act of 1976—another congressional response to executive abuses during the Cold War. Whether this check on power means anything remains unclear. When Congress faced its first major enforcement test, it reverted to acquiescence. On September 14, 2001, President George W. Bush proclaimed a state of national emergency.[68] Subsequently, as required by Congress, President Bush transmitted annual notices stating the continuance of that emergency for another year. Each year, Congress chose not to exercise its power of termination. President Obama inherited this emergency, found it useful, renewed it eight more times, and bequeathed it to his successor.[69]

The post-1945 ossification of military land withdrawals can be attributed to both active and passive forces. Politicians, agencies, and corporations that supported the national security state—and financially benefited from it—pulled levers of power to continue war games on the range. In an example of agency capture, the Interior Department did the bidding of the Pentagon. But "capture" sometimes just means going with the flow. A bureaucratic pathway, once established, enables inertia, ignorance, incompetence. The larger the bureaucracy, the greater the inertia. A 1985 legal review of Barry M. Goldwater Air Force Range revealed that the DoD had tenuous jurisdiction over the land, and that

the BLM had equally tenuous grasp of the law.[70] Congress clarified the situation with the MLWA in 1986—another victory for the World War II status quo.

Inertia affects all branches of government: consider how long Executive Order 9066—a straightforward and shameful proclamation—eluded termination. Not until 1976, when Gerald Ford proclaimed that the US bicentennial required a reckoning of the nation's "mistakes" alongside its "great events," did the executive disown the legal justification for Japanese-American incarceration. The Ford administration argued that the authorization for E.O. 9066 had in fact expired on December 31, 1946, the official cessation of World War II according to previous proclamation.[71] Regardless of when the specific power ended, the general power remained dormant for another forty years, long after Congress approved reparations, and President Reagan issued an apology. In 2018 the Supreme Court finally repudiated *Korematsu v. United States* (1944) in an ironic sidebar to a five–four decision that preserved Trump's xenophobic travel ban. The next year, when Trump declared a nonwar national emergency in service of a war cry, "Build the Wall," he ensured a future case before a high court that now contained two justices of his choosing.[72]

III. Legacies and Contingencies

The foregoing narrative uses the Second World War as a marker of continuity as well as change in the American West. Rapid and extensive land militarization from 1940 to 1955 rested on a nineteenth-century legacy of undisposed federal land—a legacy of conquest.[73] Likewise, wartime bombing ranges followed an established legal precedent of executive-order withdrawals for Indian reservations and nature reserves. Despite pushback from Congress before and after World War II, the executive's property powers were "facts on the ground."

Unlike national monuments, military reservations rarely get highlighted on maps. How are cartographers—and the public—supposed to make sense of lands that are undisposed but nondisposable? They are, in BLM terms, unclassifiable—they cannot be zoned for land use. Test-and-training bases exist in status quo limbo. The withdrawal of this vast terrain was not by itself exceptional, merely the expedient amplification of presidential power. Indeed, the most exceptional World War II land units—carceral camps for Americans of Japanese ancestry—were small and temporary. The extraordinary thing about the proving grounds has been their continuance. The extension of their durational status was part of the normalization of the "state of exception."[74] By

persisting on the National Map, these special-use reserves have become spatial and territorial expressions of war-related powers. My term for these post-1945 properties is *executive domain*.

This descriptor is legalistic. It does not fully capture the environmental, social, and moral dimensions of military land retention in the US West. Here the language of landscape has more power. Although the military prefers the neutral term "range," antimilitaristic commentators have used a variety of polemical terms: "dark geography," "classified landscape," "purloined landscape," "nuclear wasteland," "American Ground Zero," "Tainted Desert," "Ugly West," "Dead West."[75] The most common moral descriptor is "national sacrifice area." This term originated in a different context—the Arab oil embargo and the greater "energy crisis"—when a group of experts from the National Academies wrote a report at the behest of the Ford Foundation on the rehabilitation potential of western coal lands available for strip mining. Their 1973 report created a probability schema for a range of rehabilitation objectives, from "complete restoration" to "abandon the spoils." In the nation's "desert zone," only one objective had a high probability of success: call a strip mine a "national sacrifice zone," and simply abandon it when done.[76] This expression of candor quickly escaped the policy realm and became a rallying cry for rural Americans who felt that Big Coal had come to rape their land. The key phrase appeared most frequently in connection to the high plains of Montana and Wyoming, the Four Corners region, and Appalachia. In the two western areas tribal peoples as well as white residents utilized the language.[77]

Applied categorically to military reservations, the phrase simply isn't accurate—especially for the period since the 1963 Partial Test Ban Treaty. "Sacrifice" in this context suggests continuing waste or permanent abandonment. Incongruously, two major waste remediation acts—the Resource Conservation and Recovery Act of 1976 and the 1980 "Superfund" (Comprehensive Environmental Response, Compensation, and Liability Act)—both extend to DoD facilities. The same is true of landmark environmental laws of the 1970s. Can installations that employ offices of waste rehabilitation, environmental compliance, and wildlife conservation be considered sacrifice areas?[78]

Western environmentalists have learned to live with the military, for the DoD has, in the long run, proven to be an acceptable manager of land and wildlife—or no less acceptable than the "Bureau of Livestock and Mining," as detractors sometimes call the BLM. Many defense installations are critical habitat, and some may yet become national wildlife refuges if they follow the

trajectories of Rocky Flats, Rocky Mountain Arsenal, and the Hanford Reach. The ongoing endangered species recovery program for the Mexican gray wolf (*Canis lupus baileyi*) has been facilitated by White Sands Missile Range—and the military's prior removal of ranchers, livestock, and fencing.[79] Today, in the age of fracking, when most BLM lands are open to oil and gas exploration, military land withdrawals, along with congressionally designated wilderness areas, are uniquely protected from the deleterious effects of mining. Wilderness and war have compatibility in their exclusivity. In the view of the RAND Corporation, wilderness designation can be a "useful tool" for preventing "encroachment and incompatible development" near Air Force test and training ranges.[80]

In the US West, military land retention complicates the usual alliances and antagonisms over public land. Historically, many rural westerners have opposed national parks, national monuments, and wilderness areas because these designations "lock up" the land and "lock out" certain users. For many westerners the ability to freely use public land remains essential to their lived experience of American liberty. However, since World War II, the safeguarding of liberty, as defined by the national security state, has demanded the closure of vast stretches of federal and state properties, including the inverse condemnation of school trust lands.[81] If laissez-faire Republicans ever realize their dream of disposing the BLM's unreserved lands, military land withdrawals would ironically become the final "public domain." Given the benefits that come with defense facilities, libertarian opposition to military land retention tends to be situational and hyperlocal.[82] DoD reservations are job creators in job-poor areas; they add to the local tax base. Tellingly, active bases do not figure into the Payments in Lieu of Taxes Program by which the federal government has, since 1976, compensated western counties for lost property taxes related to nontaxable federal lands within their boundaries. By this calculus military land may be the most productive public land.[83]

Even if one makes a moral judgment that certain lands retained by the military have been sacrificed, one must acknowledge degrees of sacrificial killing. Asia's southern rim constituted the Cold War's "killing fields," where US-Soviet-Sino proxy wars took the lives of millions of civilians, leaving legacies of toxins and landmines.[84] During the era of atmospheric and underground nuclear testing, the Soviet Union used up areas of Kazakhstan with less legality and more lethality than the Nevada Test Site.[85] In Nevada, Yucca Mountain Nuclear Waste Depository may yet become an eternal no-man's-land—if and

when it finally goes on line. To the north, in the Carson Sink, on land originally reserved for the Bureau of Reclamation for a showcase irrigation project, the Navy has bombed Bravo-20 to the point of oblivion. In Richard Misrach's famous photography this looks like land sacrificed to Moloch. But Bravo-20 is not representative of all military land withdrawals. Although untold acreage has been ravaged and contaminated, a greater total area has been managed as multiple-use public land—minus the public. In some cases, the airspace is more important to the DoD than the terrestrial space, so long as the land has been emptied of unauthorized persons.

Military reservations exclose and enclose: they keep some things out, other things in. As exclosures, they repel cattle, ranchers, hunters, antiwar activists, recreationists, UFO chasers, and terrorists, while letting in workers and wild horses. As enclosures, they have been less successful at containing sonic booms, not to mention radiation and chemical agents. During the all-too-hot Cold War, toxins blew downwind, sickening livestock and people, and contributing to long-term cancer clusters.[86]

In 1990 the federal government belatedly acknowledged certain externalities of the executive domain. The Radiation Exposure Compensation Act—a lump-sum cash program that followed government evasions, and class-action lawsuits—applied to three populations: atomic veterans of the Nevada Test Site, downwinders in southwestern Utah, and uranium ore workers in the Four Corners. This four-state region, which includes the Navajo Nation, was radically altered by the "U-boom" of the 1950s, which brought government-subsidized roads and government-incentivized mines. Most of these uranium operations were "dog holes" with no ventilation. Even after the AEC collected evidence on the hazards of uranium mining, it did nothing to regulate or warn. Many miners died prematurely from lung cancer. Even worse, thousands of Diné on their reservation now lack potable water because of contamination from abandoned uranium mines. The 1990 act compensated for past individual harm; it did nothing to address ongoing holistic harm. Unlike the DoD the Navajo Nation does not have easy access to federal funds for environmental mitigation and rehabilitation.[87]

To adapt the formulation of Traci Brynne Voyles, Diné land was selectively "wastelanded" in service of a weapons program that made "productive use" of Numic land in the Great Basin.[88] The Nevada Test Site comprises unceded Western Shoshone land recognized by federal treaty.[89] But in the final judgment of the Indian Claims Commission in 1979, Western Shoshone

title throughout Nevada had been extinguished by a legal convenience called "gradual encroachment."[90] For this historic taking, the government agreed to pay compensation. When Western Shoshone litigants refused the settlement, and tried to revive treaty claims, the US Supreme Court ruled unanimously against them. The tribe had no further recourse because the government, its trustee, discharged its obligation when it deposited the damages into a trust account.[91] Unbowed by this loss, Western Shoshone activists have since contributed to the postponement of Yucca Mountain, and the cancellation of a major weapons test at the Nevada Test Site, using the language of sovereignty and sacredness.[92] Their local treaty-based activism challenges the still-dominant national media portrayal of the Great Basin as a wasteland—a natural repository for waste.[93]

In Utah, members of a related Numic group, the Goshutes, made a different choice in a similarly impossible situation. Historically, outsiders did not covet their homeland, for they lived on the edges of the Great Salt Lake Desert, among the most challenging landscapes in North America. Eventual encroachment by ranchers motivated the executive to delimit two tiny reservations, effectively designating two tribelets, in the 1910s. Then, in the 1940s, the Skull Valley Band of Goshutes abruptly found its reservation surrounded on three sides by aerial bombing ranges and chemical testing grounds. Due to military impacts, the reservation lost economic potential. As of 1997, some four-fifths of the band's give-or-take 125 members had left Skull Valley. That year, in a last-ditch but well-considered move, the Skull Valley Goshutes entered into contract with a private firm representing a consortium of energy utilities. The band—with the blessing of the DOE and the BIA—planned to build a temporary storage facility for nuclear waste on the reservation. In response, the political leadership of the State of Utah—the same elected officials who gave unwavering support to the highly contaminative Utah Test and Training Range—declared war against the sovereign tribe's economic enterprise, citing public safety concerns. The governor's oppressive efforts to create a "land moat" around the reservation failed in court, but they succeeded in slowing down the regulatory process. Then, Utah's antienvironmentalist, antistatist delegation, led by Rob Bishop, cynically partnered with urban environmentalists to pass a bill that gave strict wilderness protection to one mountainous area in western Utah that just so happened to cover the BLM-approved route of the rail spur that would deliver the waste to Skull Valley. Forced by Congress, the BLM canceled the right-of-way; and the BIA, under pressure from Utah, reversed its approval of the contract.

Frustrated by delays, the utilities pulled the plug in 2012. In the end, the Skull Valley Band had nothing to show for its initiative.[94]

As this ugly example suggests, the Indian reservation system is the lost fraternal twin of the military reservation system. Military forts and Indian reservations shared the same legal parentage in the early republic, but in the twentieth century the progeny separated. Thanks to political and legal clarifications related to World War II and the Cold War, every dimension of a military reservation—including subsurface, surface, and air rights—clearly belongs to the executive, as managed by and for the Pentagon. A military reservation is a kind of federal property, whereas an Indian reservation is a legal regime that encompasses various forms of title subject variously to tribal, state, and federal laws. Historically, the federal government had three mechanisms by which it could cede land to Indian tribes: statute, treaty, and executive order. Today, the boundaries of an Indian reservation may include private (fee-simple) land as well as federal (nonfee) land. The private land may be owned by tribal members or tribal corporations—or by non-Indians or nontribal entities. The federal land is held in trust by the BIA on behalf of individual tribal enrollees (including fractional owners) or for the tribe as a collective. Despite the sovereignty promised by territoriality, tribes don't (yet) enjoy enough self-determination to release their reservations from federal paternalism. In short, American Indian property has become ever more complicated and contradictory, while the executive domain has become simplified and unambiguous.[95]

Another crucial difference: military reservations support general concepts like "national security" and "national good" rather than specific rights granted by treaty to tribal communities. When the BIA, as trustee, decides (or defers) property questions on an Indian reservation, it must, for better and usually worse, determine what is best for tribes and tribal members on ancestral lands. By contrast, the DoD can manage military reservations without thinking of permanent on-site residents, much less multigenerational inhabitants. Perhaps the defining social characteristic of military bases is the impermanence and placelessness of the personnel. In a bureaucratic sense, military bases without true occupants are ideal sovereign lands. The history of the US military in the Atlantic, Pacific, and Indian oceans demonstrates the strategic importance of such uninhabited—or depopulated—locations.

For this overseas dimension there is another prewar day that lives on without infamy: September 2, 1940. That was the date FDR informed Congress about a deal the White House executed on its own with Great Britain. By the terms

of the "destroyers-for-bases" agreement, the United States traded fifty "overage" naval ships for long-term leases on military bases in multiple territories in the western Atlantic. For his authority FDR claimed that "preparation for continental defense" was "an unalienable prerogative of a sovereign state." The immediate context was Hitler and fascism, but for his precedent Roosevelt referenced Jefferson and expansionism. "This is the most important action in the reinforcement of our national defense that has been taken since the Louisiana Purchase," the president told Congress.[96]

By referencing the founding act of the imperial presidency (an emergency action made, ironically, by a great Anti-Federalist), FDR illustrated the interplay of legacies and contingencies. World War II, a contingent event, enabled an expansion of military land withdrawals in the US West and a matching explosion of US military basing overseas. Contingencies are most consequential when they redirect legacies—in this case, federal properties in the Caribbean and the Pacific as well as the trans-Mississippi West. From 1803 through 1898, as the United States grew from a continental to a semiglobal power, it annexed numerous guano islands and more traditional colonies like American Samoa, Guam, Hawai'i, the Philippines, and Puerto Rico.[97] From this imperial foundation the United States could in 1945 take immediate advantage of its superpower status by establishing bases across the globe—by right of victory and by persuasion of power.

Here it is important to make a connection—and draw a distinction—between the US military's sovereign and *extra*-sovereign dominion, both of which were critical to the establishment of the post-1945 order, and the nation's "forward presence" from the Cold War through the War on Terror. Sovereign dominion requires federal title. It includes military bases in the US South (mainly used for basic training), military reservations in the US West (mainly used for weapons and equipment testing), and more than a dozen insular areas, both incorporated and unincorporated. By contrast, extrasovereign dominion comprises some eight hundred "base sites" leased from foreign countries. These sites appertaining to the United States constitute the "leasehold empire" (C. T. Sandars), or the "networked empire" (Ruth Oldenziel), or the "pointillist empire" (Daniel Immerwahr). In countries that the United States defeated, or occupied with permission, these leased sites are extensive and semipermanent. Defense installations in Germany, Italy, Japan, and South Korea have functioned as spatial complements to military reservations in California, Nevada, New Mexico, and Utah. Meanwhile, in oceanic zones, military lands (leased

or owned) do not require great size to host intensive basing or testing—or torture. For examples, consider the respective histories of Bikini Atoll, Diego Garcia, and Guantanamo Bay. Unincorporated military lands can also facilitate large-scale conservation. In one of George W. Bush's final acts as president, in a transparent attempt to salvage a Rooseveltian legacy, he deployed his executive authority to set aside Pacific Remote Islands Marine National Monument, which covered a surface area more than one hundred times that of Yellowstone National Park. President Obama later added to this ocean reservation, made possible by US ownership of strategic locations like Wake Island.[98]

The 1940s base-building campaign at home and abroad was, in retrospect, a moment of peak US influence, when the future of abundance, and the promise of liberalism, seemed limitless. The global footprint of this imperial idealism outlasted the Cold War. But after the triple disasters of the George W. Bush presidency—two reckless wars and one financial crisis—the national mood changed, as Donald Trump intuitively recognized. President Trump is hardly an anti-imperialist, but his rhetoric rejects globalism in favor of (white) nationalism; and stresses hard limits for some rather than endless horizons for all.[99] In the tumult following the 2016 election, the "American Century" (i.e., building bases) rhetorically shrank to "America First" (i.e., building walls). Even so, the US military has not yet retreated from its forward posture: its dual dominions persist, comprising a vast concretion or, in DoD language, "base structure." Going forward, however, the leasehold empire will inevitably contract. This contraction may make federal lands like Guam and the Utah Test and Training Range all the more strategic.

Where is American empire is also a temporal question: *When* has the United States acted imperially? In 1793, when James Madison made his prescient comment about executive aggrandizement in wartime, he could not have foreseen that the new republic—now the oldest constitutional democracy in the world—would scarcely go any year of its existence without being in a state of war, or a state of emergency, or both. The history of US expansionism—continental, then extracontinental—is a war-filled record of land grabs that unfolded deliberately, and opportunistically, and also accidentally. The US entry into World War II did not finally occur until one empire made a surprise attack on its rival empire in the Pacific. The coordinated Japanese strikes on US bases in federal territories (Hawai'i, Guam, the Philippines) on December 7/8, 1941, set into motion a series of contingencies that eventually produced US bases on Okinawa Island.

American territoriality and American temporality have global and epochal

dimensions. The year 1945, the pivot point for military land withdrawals, was also the takeoff of what environmental historians—and geoscientists—call the Great Acceleration. The post-1945 period brought a step-function increase in the human impact on the planet as measured in land use, water use, and energy use.[100] The US military helped to defend and export the high-use "American way of life"—a process that generated as many long-term detriments as short-term benefits. The awareness that humans and nations (some more than others) have planet-changing capabilities owes much to US military planners who, during the Cold War, developed environmental scenarios about World War III.[101] Now, seventy-five years after the conclusion of World War II and the introduction of postwar wartime, the DoD is an anomaly: a branch of the US government, dominated by Republicans, that accepts climate science and makes contingency plans for global warming as a national security threat. If, as some Democrats hope, a future president declares climate change a national emergency, the US military would have strategic interest to respond with alacrity. In the coming decades, as the Earth system crosses thresholds and enters feedback loops, the executive domain may become newly important to the national good—assuming the commander in chief still governs as a constitutional executive.