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## After the Frontier: Separation and Absorption in US Indian Policy

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*This article seeks to chart the shifting post-frontier strategies whereby Indian societies were incorporated into US society. Recognised as techniques of settlement, US policies that have been viewed as discordant or antithetical emerge as complementary implementations of the settler colonial logic of elimination. The article discusses three of these strategies: Indian removal, general allotment, and blood quantum criteria, arguing that scholars who have viewed the surface differences between these strategies as signs of incompatibility have failed to acknowledge the overarching context of settler colonial invasion, a process that continues after the initial expropriations of Indian landowners. Geographical removal eliminated Indians quickly and effectively, but it was an inherently temporary solution. On the passing of the frontier, with no space left available for Indian removal, relations with Indians – the first arena of US foreign policy – became a depoliticised arm of domestic administration. Various techniques of Native assimilation, all of which had previously existed in undeveloped forms, came to dominate US Indian policy. The article considers two of these techniques, allotment and blood quanta, noting their continuity with earlier strategies for eliminating Indians.*

The process whereby Indians shifted from being external to Euroamerican society to being incorporated within it was piecemeal and drawn out. In Anglophone North America, it spanned three centuries, the seventeenth, eighteenth and nineteenth, extending from the era of the Powhatan Confederacy to that of Wounded Knee. On the passing of the frontier, US Indian affairs discourse shifted from international relations – the fledgling republic's initial foreign policy having been treaties with Indian tribes – to a depoliticised arena of domestic administration. The settler colonial logic of elimination in its crudest frontier form, a violent rejection of all things Indian, was transformed into a paternalistic mode of governmentality which, though still sanctioned by state violence, came to focus on assimilation rather than rejection. Invasion became bureaucratised, a paper-trail of tears that penetrated Indian life in

the form of Bureau of Indian Affairs<sup>1</sup> officials rather than the US Cavalry. The twin centrepieces of the post-frontier assimilation campaign were allotment, whereby tribal patrimonies were to be split up into individually-owned plots that allotted Indian proprietors could transfer to White people, and blood quanta, the distinctively BIA style of racial arithmetic whereby Indian identity became correspondingly apportioned. In combination, allotment and blood quanta sought to destroy tribal governance and break up the tribal estate.

For all its domesticity, however, the internalised identity politics of the post-frontier era retained the inherently international concept of the treaty, a uniquely Indian legacy that continues to mark Indigenous peoples' extended historical transition from externality to interiority to Euroamerican society. No other social group in the USA has treaties, a fact that categorically distinguishes Indians from other subjugated groups ('races', 'minorities',<sup>2</sup> etc.) whose different historical experiences are effaced under the levelling rubric of multiculturalism. To register this uniqueness as part of a wider call for antiracist and anticolonial solidarities to be based on the recognition of historical differences,<sup>3</sup> this article will seek to express the divergent styles of eliminationism whereby Indians' progressive containment within the federal body politic was inscribed and managed in US Indian policy.

An alternative to either exterminating or absorbing the Natives was geographical removal – the Natives stayed Natives, only somewhere else. This alternative was less satisfactory than assimilation because it was temporary. Sooner or later, the frontier caught up with the new tribal boundaries and the process had to start all over again. On the other hand, removal was considerably faster than the incremental procedure of assimilation – at least, in assimilation's biological aspect, which required a minimum of one generation. Cultural assimilation could be effected more quickly. Thus, in the wake of the straightforward violence of territorial dispossession, we encounter a range of concurrent settler strategies that blur into one another, spatial removal overlapping with biocultural assimilation in a domestic context in which Natives continue to be subject to disproportionate levels of violence. To chart Indians' progressive containment, therefore, the following analysis will seek to characterise some of the ways in which these

complementary settler strategies segue into and reinforce one another in post-frontier US Indian policy.

Constitutionally, the status of Indian tribes or nations was defined by the US Supreme Court in 1831 in the case of *Cherokee v. Georgia*. In that landmark judgement, Chief Justice John Marshall enunciated the twin concepts of wardship and domestic dependent nationhood on which the relationship between Indian tribes and the federal government was founded, as it remains founded. As I argue elsewhere, *Cherokee v. Georgia*, in combination with the other two of the Marshall court's so-called Indian judgements, *Johnson v. McIntosh* (1823) and *Worcester v. Georgia* (1832), adapted the monarchical doctrine of discovery to the still-emergent republican environment.<sup>4</sup> For our present purposes, the two core principles that animated the doctrine of discovery were: first, the imbalance between the diminished right of territorial possession or occupancy that it assigned to Natives and the overarching dominion that it assigned to European sovereigns; and, second, the fact that discovery, along with the law of nations as a whole, concerned relations between European sovereigns rather than between Europeans and Natives.<sup>5</sup> In combination, these two principles provided for an inferior form of Native title that remained extinguishable at will by the discovering sovereign. In contrast to the form of property right that the doctrine made available to Europeans, Indian occupancy was detachable from title. Fee simple in the United States, as in other settler colonies, remains traceable to a grant from a European (or Euroamerican) sovereign. Property starts where Indianness stops.<sup>6</sup> These principles were translated into the language of republican jurisprudence by the Marshall court, in particular in its bedrock concept of domestic dependent nationhood. In this concept, the first two terms, 'domestic' and 'dependent' defuse and diminish the sovereign implications of the third term, 'nation'. Marshall had no alternative but to concede the juridical status of nationhood to the Cherokee, who were attempting to bring a case against the state of Georgia, since the federal government had engaged in treaties with them, treaty-making being an inherently international procedure. In this inescapably sovereign context, the domestic and dependent qualifications so diminished the status of Indian nationhood that, in contrast to foreign nations, the Cherokee were not even allowed to take their case to the Supreme Court, to which only US citizens and

foreign nations could bring complaints. In 1831, then, with treaties based on the concept of domestic dependent nationhood, the shift from international relations to internal administration was firmly established. Thus we can begin to address the complementarity between early-nineteenth century treaties, which principally functioned to remove Indians from territory that was coveted by White people, to the late-nineteenth century assimilation campaign, which sought to incorporate Indians into White society.

## INDIAN REMOVAL

Indian removal presupposed an unclaimed space in which the dispossessed could be relocated. The concept of Indian country goes back at least as far as the Royal Proclamation of 1763, issued in the wake of the French and Indian (or Six Years) War, which, in addition to constituting Quebec as British, established the first boundary line (roughly, the crest of the Appalachians) between British colonial territory and Indian country.<sup>7</sup> As such, the Royal Proclamation constitutes the first specification of a bounded zone, beyond the limits of colonial settlement, that belonged generically to Indians.<sup>8</sup> The mere fact of official zoning did not, of course, restrain the activities of landgrabbers and speculators, so the push to extinguish Indians' tenure over one part of the country generated a need to safeguard their tenure over another. In a 1789 report to Congress, Secretary at War Henry Knox recommended that the intrusion of White people into Indian territory could be 'regulated' by establishing colonies of Indians that would be protected by troops.<sup>9</sup> Some of the English colonies had earlier taken such measures. As Annie Abel pointed out, however, the English may have reserved *ad hoc* spaces for individual groups, but it would take President Thomas Jefferson to contemplate 'the organization of what would have become an Indian Territory, perhaps an Indian state, to which all tribes might be removed'.<sup>10</sup> Jefferson not only came up with the idea. Through the Louisiana Purchase, he gave it spatial feasibility. Section 15 of the *Louisiana Territorial Act* of 1804 provided that 'The President of the United States is hereby authorized to stipulate with any Indian tribes owning land on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and

settle thereon'.<sup>11</sup> Along with territory west of the Mississippi came the promise of the federal government being able to sign Indian treaties without making territorial concessions that would antagonise the states. In addition to saving the Union, therefore, the Purchase forged a union between treaties and removal. The outcome could not have been more fateful for Indians and Blacks alike. The extension of the slave-plantation economy in Georgia, Tennessee, Arkansas, Louisiana, Mississippi, Alabama and the Florida panhandle was conditional upon Indian removal. The Purchase provided the territory west of the Mississippi that the US government exchanged for the homelands that removing tribes were obliged to surrender by way of treaties.<sup>12</sup>

With Andrew Jackson as president, Congress passed federal removal legislation in 1830.<sup>13</sup> By the end of the 1830s, the Creek, Choctaw, Chickasaw and Cherokee peoples had been removed west of the Mississippi while, in Florida, ceded by the Spanish, the majority Seminole's days were numbered. Less well-known but comparably brutal removals had also taken place in the North.<sup>14</sup> In 1845, Texas joined the Union. Over the following two years, under pressure of war, Mexico yielded territory from Texas to the Pacific. Two decades later, the Civil War enormously intensified the militarisation of the United States.<sup>15</sup> In the postbellum era, augmented by industrial development, railroad penetration, telegraphic communication, buffalo culls and a population endlessly replenished by immigration, this enhanced military capacity enabled the lightning-war conquest of the warrior-hunting nations of the Great Plains, who were rapidly relegated to reservations, out of the path of the settler nation's westward expansion.<sup>16</sup> Once confined to reservations, Indians became, in Colonel Dodge's words, prisoners of war.<sup>17</sup> Through all these profound developments, the foreign-affairs idiom of national sovereignty continued to characterise treaty-making.

A recurrent feature of removal treaties was allotment, whereby certain tribal members would stay behind and, as proprietors of individual parcels of land, become agriculturalists. Ideologically, allotment furnished an answer to critics who complained that removal was oppressive. More immediately, it also provided a way for White traders to recover debts incurred by individual Indians, who

could not offer tribal land in settlement.<sup>18</sup> White officials assumed that allotment would encourage voluntary removal: allottees would sell their plots in order join tribal fellows who had moved west.<sup>19</sup> 'President Jackson and his advisers were caught off guard, therefore', commented Ronald Satz, 'when thousands of Choctaws decided to take advantage of the allotment provisions and become homesteaders and American citizens in Mississippi'.<sup>20</sup> This was not how nomads were meant to behave. The prospect of improvable Indians undermined a hereditarian justification for removal, whereby Indians' incurable savagery made it impossible for Whites to coexist with them. In keeping with the Lockean narrative informing the wider discourse of discovery, a stubborn incapacity for agriculture was central to this savagery.<sup>21</sup> So far as many Indians in the South were concerned, there was a contradiction in all this, as the oxymoron 'civilized tribes' attested. These Indians had been agriculturalists for millennia. They had taught White people to grow corn and tobacco. In return, White people had taught them the wandering ways of the sylvan romance, which they had been obliged to learn rather quickly as a consequence of having their homes and crops burned by land-hungry invaders. Anthropologist Gerald Sider has illustrated the depth and tenacity of this potent ideological inversion. Recalling his distress at witnessing young Lumbee men lining up to volunteer as scouts in Vietnam, a group who suffered one of the highest mortality rates in field combat, Sider reflected on the irony of these descendants of expelled agriculturalists identifying with the wandering forest life that settler ideology had exchanged for their gardens: 'What these Indian children often said, before they went off to their doom, was a pack of self-assertive, self-destructive, imposed and claimed lies: We Indians have special abilities to move silently through the forest; we Indians have special skills as scouts and as hunters – we Indians will show them'.<sup>22</sup>

Nomadism naturalised removal. The image of the wandering Indian, forever passing through, endlessly surveying the horizon, attenuated Indians' acknowledged ties to land, assuaging the violence that removal did to common-sense understandings of property. People who were routinely on the move would not be unduly inconvenienced. Noting that settlers had uprooted themselves to remove from Europe, Jackson rhetorically asked if it was to be supposed that 'the wandering savage has a stronger attachment to

his home than the settled, civilized Christian?'.<sup>23</sup> In this connection, no problem arose when Indians behaved like Whites. Nor did they merely vacate their own homelands. In resettling across the Mississippi, removing tribes acted as proxy Whites in relation to the peoples who already lived there, who were beginning to feel the game-depletion that settler encroachment occasioned.<sup>24</sup> To acquire territory that it could exchange for the land that removing tribes were relinquishing in the South (which was rapidly becoming the South-East), the US government solicited treaties with the Osage and other Plains societies in the West.<sup>25</sup> Being only too aware of the provocative impact of alien incursions, the Chickasaw had a clause included in the first section of their 1834 removal treaty obliging the US to protect them from the traditional owners of their new home across the Mississippi.<sup>26</sup> Crueller still was the irony whereby Cherokee who had earlier removed to Arkansas at Jefferson's urging found their new country threatened, 25 years on, by an influx of Eastern Cherokee who had initially chosen to stay but who, by 1834, were facing forcible removal.<sup>27</sup> In an abortive treaty that the Western Cherokee signed with their Indian agent, they were promised that there would be no new arrivals unless extra land were provided. The Stokes commissioners at Fort Gibson refused to submit this treaty to the War Department.<sup>28</sup>

An immediate spur to removal was provided by a landmark in Indian civility, the Constitution of the Cherokee Nation.<sup>29</sup> Abel summarised the gathering transformation that this initiative consolidated: 'It was not enough [for the Cherokee] to have their own alphabet, their own printing press, their own churches and schools, their own laws, regulating public and private relations, they must have a republican form of government'.<sup>30</sup> Meeting in New Echota, the Cherokee constituent assembly made its decision to draft a national constitution on July 4th 1827, a day whose progressive connotations could hardly have been stronger. The procedure did not take long, the new constitution being so closely modelled on that of the United States that it was drawn up and ratified by the end of the month.<sup>31</sup> Rather than showing the hostile Georgia government that they were worthy neighbours, however, the new constitution was taken as final proof that the Cherokee had no intention of leaving of their own accord. Persuasion having failed, the Georgia legislators hardened their commitment to compulsion. Through legislation passed



between 1828 and 1830, Georgia annexed Cherokee territory lying within its chartered limits, annulled all laws passed by the Cherokee nation and forbade White people to live in Cherokee country without a licence from the state.<sup>32</sup> The upstart Constitution had given the Georgia legislators a constitutional pretext of their own. Article IV of the United States Constitution provided that 'New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the Jurisdiction of any other State [...] without the Consent of the Legislatures of the States concerned as well as of the Congress'. As the Cherokee pointed out, and as numerous treaties attested, their nation was not only sovereign and, accordingly, beyond Georgia's jurisdiction, but it was by no means new.<sup>33</sup> As the passing of the 1830 Indian Removal Act attested, however, the Cherokee's days were numbered.

As indicated, though the Indian removal program was spatial in essence, it also inscribed a hardening cultural pessimism: not only were Indians and Whites unable to live together; they would remain so.<sup>34</sup> This increasingly hereditarian perspective was not a spontaneous theoretical departure from Enlightenment-style environmentalism but a symptom of impatience with the civilising process (two centuries earlier, a similar shift had hardened Puritan attitudes in the wake of the Pequot War<sup>35</sup>). Indians were surrendering their homelands too slowly. According to this hereditarian narrative, Indians' refractory condition allowed two possibilities: either they could cease to be Indians – i.e., assimilate or die – or they could remove.<sup>36</sup> As a Chickasaw treaty negotiator summed up the choice presented to Indians, they could either stay behind, lose their name and language, and become White, or they could cross the Mississippi and lose their homeland.<sup>37</sup> These alternatives existed in each other's shadow. Thomas Jefferson and Andrew Jackson were principally responsible for bringing them together. In 1817, when removal and assimilation were explicitly linked in treaty bargaining, General Jackson recalled a talk that President Jefferson had given to the Cherokee eight years previously. As an inducement to the tribe to exchange its land for land in Arkansas, Jefferson had offered those who did not want to go West the option of staying behind, only on 640-acre individual allotments rather than on tribal land.<sup>38</sup> The idea was to prove consequential. Returning to it in 1817, Jackson posed the alternatives of remaining tribal and removing or remaining on

traditional land in an untraditional way, as holders of individual allotments subject to state law. As Michael Rogin observed, these alternatives 'shared an underlying identity'.<sup>39</sup> Either way, as Indians, Indians would lose their land.

The proposition that removal and assimilation are two sides of the same coin is at odds with an influential view of them as antithetical. According to Charles Wilkinson and Eric Biggs, for instance, 'Virtually all federal Indian policy can be analysed in terms of the tension between assimilation and separatism'.<sup>40</sup> Analogously, Wilkinson and Biggs' fellow legal scholar Nancy Carter distinguished between an 'early posture of nonassimilation' which treated Indian tribes 'as entities to be dealt with by treaty' and a later policy era in which Indians were individually targeted 'as citizens to be brought under the laws of the nation'.<sup>41</sup> This perspective is not confined to legal scholarship. Thus no less a historian than Mary Young could cite a 'dilemma both whites and Indians have faced as to whether segregation or assimilation should be the proximate strategy or ultimate fate of the native American' as evidence for her controversial claim that 'The Yamasee have vanished'.<sup>42</sup> Admittedly, assimilatory measures came to predominate after treaty-making was abolished in 1871. By that stage, however, there was little vacant land left beyond the penumbra of White settlement, so, of the two strategies, only assimilation remained viable. When this happened, most Indians could no longer be moved on to free up their land for White appropriation. They could, however, be moved *in* to free up their land for White appropriation, embarking on the path to citizenship through becoming the individual proprietors of alienable allotments. In view of the positive valorisation attaching to citizenship, it is not surprising that this complementarity should be mistaken for tension. But this is to confuse Indians' historical experience in US society with that of Black people.

Viewed in the context of Black American history, Indian removal might seem to represent a fulfilment of the exclusionist dream underlying the colonisation movement and Jim Crow. It would be hard to find a more thoroughgoing form of segregation than one in which, rather than being restricted to particular locations and public facilities, people were actually hidden over the horizon, beyond any form of contact. Yet this makes no sense of the

objection, made in relation to reservations, that they separated Indians from membership of US society. This is what assimilationists opposed to Indian sovereignty would urge in the twentieth century, during the dark days of allotment and tribal termination.<sup>43</sup> Yet these champions of Indian equality were not generally notable for extending the argument to the condition of African Americans. In stark contrast to the segregation of the formerly enslaved, the spatial removal of Indians was an inherently temporary expedient, adopted pending their absorption. The difference is very clear: The exploitation of Black people did not require their equality. Negro citizenship did not enlarge the national estate. By contrast, a contradiction of assimilationism was that Indians' elimination was routinely hampered by the success with which they had been able to mimic the ways of White people. Premised on Indian recalcitrance, removal was vulnerable to their civility. Thus it is no accident that, regardless of the profound sociocultural differences distinguishing them, the programme's primary targets (the Choctaw, Chickasaw, Cherokee, Creek and Seminole peoples) should find themselves collectively designated 'The Five Civilized Tribes' in Euroamerican parlance.

There was a distinctively Edenic cast to the predicament of civility.<sup>44</sup> Indians who tasted the fruit of civilisation lost their innocence, gaining cunning rather than knowledge. This perverse approximation to whiteness lent itself to the idiom of heredity. A key feature of assimilationist rhetoric was its systematic confusion of genetic and cultural criteria. To become civilised, Indians had to become White, and vice versa. Accordingly, a political problem could arise when Indians became too White. In 1816, for instance, Jackson complained of the 'designing half-breeds and renegade white men' who had encouraged Chickasaw reluctance to cede land.<sup>45</sup> When Indians invoked the vocabulary of American freedom, their impertinence could be put down to European ancestry.<sup>46</sup> No one was more subject to this reproach than John Ross, the Cherokee leader who, as hostile Whites never tired of pointing out, was of largely Scottish biological extraction.<sup>47</sup> Prominent figures such as Creek leader Alexander McGillivray, Chickasaw leader Levi Colbert and Choctaw leader Greenwood LeFlore were also discredited on account of their White ancestry. Opposition to removal was routinely attributed to the machinations of self-serving half-breeds, who

allegedly connived to frustrate the intentions of full-blood traditionalists who saw removal as an opportunity to protect their people from the disruptive influence of Whites.<sup>48</sup> Whether or not such a division obtained in Indian society (there were tribespeople with European ancestry on either side of the Indian controversy over removal<sup>49</sup>), the issue certainly reflected a schism within European society. Removal threatened to make proselytisation more difficult for missionaries, who generally opposed it. In 1826, for instance, LeFlore, David Folsom, and Samuel Garland, all Choctaw descended from White fathers and opposed to removal, replaced the old 'full-blood' leadership at a time when the United States was seeking a treaty of cession from the Choctaw. Soon afterwards, missionaries inspired by the Second Great Awakening encouraged Choctaw Christian preachers to launch a 'Great Revival', a campaign with which the new leadership was identified. Some of the strongest opposition came from Peter Pitchlynn, who, like the three new chiefs, was a White trader's son. Pitchlynn, who allied himself to the disaffected 'full-blood' chief Moshulatubbee, parodied Folsom's gospel as 'Join the church and keep your country'.<sup>50</sup> To retain their leadership, the old chiefs offered to remove. The local Indian agent approved, reporting to the government, in terms that could hardly express the affinity between assimilation and removal more succinctly, that 'the greater part of the full Bloods would follow, and the half breeds could be made full citizens'.<sup>51</sup>

The key contradiction of civility was that it lifted Indians out of prehistory and inserted them into the future. Elimination was inherently chronological – whether dead, removed or assimilated, Indians would pass into memory. Euroamerican time, as Benjamin Lee Whorf put it, flows out of a future, through a present and into a past.<sup>52</sup> Correspondingly, as their nomadic condition attested, Indians were deemed impervious to linear temporality. Nomadism was not only conducive to removal. Nomads were bound into the realm of disappearance at a deeper level, subsisting on dwindling indigenous resources whose reproduction was finite. Agriculture, by contrast, in common with the Cherokee's progressive Constitution, staked a claim on the future. As individuals, Indians would not disrupt the forward flow of Euroamerican history, the time of the nation - not merely because they could be relied on to sell their private plots but more profoundly because, as individuals, they would cease being

Indian. Detribalised, they would merge into settler society, the challenge that they presented to the rule of private property evaporating as surely as removing tribes evaporated into the West. Heredity – the reproach of hybridity – could be invoked to disguise this transformation, substituting phenotype for social type.

On the face of it, the genealogical inauthenticity that was alleged of Ross and others might seem to have anticipated the Dawes-era blood-quantum discourse that we shall encounter below. But this would be to mistake surface detail for historical motivation. There is a fundamental difference between ancestral slurs intended to discredit Ross's personal intransigence and a genetic calculus that would seek to destroy tribal organisation through impartially assimilating Indians as *Indians*, a blanket category that would be impervious to personal demeanour or affiliation. The adoption of this strategy into national policy would mark the closure of the frontier, culminating the long-run process whereby Indians' relationship with settler society shifted from one of externality to one of interiority. Once the territory bounded by Mexico, Canada, the Atlantic and the Pacific had been effectively settled, the only space left available for expansion was within, a condition that rendered the frontier coterminous with reservation boundaries.<sup>53</sup> Prior to this development, however, space had provided an alternative to race, banishment across the frontier (or, later, confinement to reservations) providing favoured techniques of elimination. Consider, for instance, Article 3 of the treaty that the Ponca were induced to sign before being removed (for the first time) in 1858:

The Ponca being desirous of making provision for their half-breed relatives, it is agreed that those who prefer and elect to reside among them shall be permitted to do so, and be entitled to and enjoy all the rights and privileges of members of the tribe, but to those who have chosen and left the tribe to reside among the whites and follow the pursuits of civilized life, viz: [eight individuals, with separate residences specified] [...] there shall be issued scrip for one hundred and sixty acres of land each [...]<sup>54</sup>

Here, in the antebellum era, for Ponca who choose to stay behind (named members of the *Métis* elite through whose good offices the treaty had been arranged), core elements of the *fin-de-siècle* Dawes programme are already in place: individuals assimilate into White society by means of allotments while the tribe ceases to obstruct White access to its homeland.

One aspect of the Ponca treaty does, however, stand out in contradistinction to the later Dawes regime. Though mixed-bloodedness is an operator (in that it denotes those eligible for assimilation), it lacks implications for tribal membership. Here we begin to see the relationship, which the following sections will explore, between blood quantum discourse – which is to say, race discourse in its specifically Indian application – and the internalisation of Indian societies. The Ponca whose mixed-bloodedness was without consequence were those who remained external by virtue of consenting to remove. Externally, the US government's Indian problem was a tribal one. Assimilating individual members would not make tribal territory, which was collectively held, available (indeed, it could have the reverse effect, since treaty negotiators regularly relied on 'mixed-blood' elites to secure tribal acceptance of treaties<sup>55</sup>). Moreover, for treaty purposes, it was in the US's interest for tribes to be composite. Breaking them down into smaller units would only necessitate additional treaties. Prior to internalisation, in other words, the US government relied on the very tribal governments that it would subsequently seek to dismantle. At this stage, White ancestry could be cited to impugn uncooperative leaders such as McGillivray or Ross, while the presence of White or Black elements in a tribe's make-up could be seen to aggravate the military threat that it posed, as in the case of the Seminole.<sup>56</sup> But such assertions were part of the polemics of removal, aimed at the leaders' refusal to sign treaties rather than at their putative somatic make-up. Over the frontier, neither civility nor mixed-bloodedness posed a problem – even Jackson had not minded a Cherokee Constitution operating in Oklahoma.<sup>57</sup> Once a tribe was internalised, however, its government constituted an obstacle that frustrated the US government's access to individual Indians. The impediment to assimilating tribes into the body politic was not simply that they were collective groupings, since the United States encompassed other collectivities – in particular, of course, the states

themselves but also, from late-century on, corporations.<sup>58</sup> Rather, tribes were inassimilable because they were heteronomously constituted entities whose organising principles were discordant with those that governed the structurally regular institutions of US society, which were uniformly constituted around the centrality of private property. Thus the obstacle to the Indian Territory's admission to statehood was not its demographics but its commitment to collective ownership.<sup>59</sup> Indians were the original communist menace.

To appreciate the deeper commonality linking the ostensibly contrary policies of segregation and assimilation, we shall shift into the post-frontier era to consider a campaign that, on the face of it, would seem to represent Indian removal's antithesis. Rather than displacing Indians somewhere else, the allotment policy sought to connect each individual Indian to a fixed parcel of land. Once the commonality between the policies of Indian removal and allotment in severalty has become clear, we will consider the affinity linking these explicitly territorial policies to the manifestly corporeal discourse of blood quanta.

## **GENERAL ALLOTMENT**

Understood as an internal correlate to removal, allotment exhibits many of the same characteristics. Like removal, it detached Indians from their land, enabling the US government to extinguish tribal title to it. This occurred because individual allotments, which were usually of 160 acres, were of smaller expanse than a pro rata division of tribal territory would have yielded. Before allottees could begin to sell their plots, therefore, the government had already appropriated the surplus. Moreover, as Cole Harris has observed, capitalism benefited doubly from allotment, 'acquiring access to land freed by small reserves and to cheap labour detached from land'.<sup>60</sup> Allotment also marked a refusal of collective organisation. 'A protected Indian title to land', enthused the Indian Rights Association in 1885, two years before the passage of the allotment legislation that it championed, 'is the entering-wedge by which tribal organization is to be rent asunder'.<sup>61</sup> President Theodore Roosevelt agreed, extolling the *General Allotment Act* in his message to Congress of December 1901

as 'a mighty pulverizing engine to break up the tribal mass'.<sup>62</sup> Given such basic correspondences, it is not surprising that inchoate forms of both removal and allotment should have existed from the early days of White settlement. The General Allotment (or 'Dawes') Act did not invent allotment, any more than the Indian Removal Act invented Indian removal. The General Allotment Act made allotment general. Though it certainly brought increased system, the fundamental tendency that the act enshrined was by no means an invention of the 1880s.<sup>63</sup> J.P. Kinney found a legislative order of the General Court of Massachusetts that declared as early as 1633 that 'if any of the Indians shall be brought to civility, and shall come among the English to inhabit, in any of their plantations, and shall there live civilly [sic] and orderly, [...] such Indians shall have allotments amongst the English, according to the custom of the English in like case'.<sup>64</sup>

Such cases were admittedly rare. On the founding of the new Republic, however, enthusiasm for the procedure mounted, with allotment being pressed on Indians from Washington's time on.<sup>65</sup> Treaties provided for allotments in the early period of the Republic,<sup>66</sup> though the private-property dimension was not necessarily expected to apply in the short term. Under Article 4 of the 1820 Choctaw treaty of Doak's Stand, which became a model for removal, it was agreed that the tribal boundaries that the treaty established would remain unaltered (and on the east side of the Mississippi river) 'until the period at which said nation shall become so civilized and enlightened, as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation'.<sup>67</sup> In the same year, the Indian agent for the Osage recommended allotments of 160 to 640 acres.<sup>68</sup> These proportions would become familiar.<sup>69</sup> Over the following three decades, allotment provisions continued to be common but were not uniformly specified. From mid-century on, however, in Vine Deloria and David Wilkins' words, 'the full weight of government' was brought to bear on 'the idea of allotting Indian lands and bringing individual Indian families into the small town/family farm way of life'.<sup>70</sup> Between 1853 and 1856, as Indian Commissioner George Manypenny reported, over 50 treaties were negotiated, the majority of which provided for allotment in severalty.<sup>71</sup> In later life, vainly counselling against the Dawes legislation, a repentant Manypenny



recorded that, in dissolving the tribal relation and encouraging allotment and citizenship, 'thus making the road clear for the rapacity of the white man', he had acted in good faith: 'Had I known then, as I know now, what would result from those treaties', however, 'I would be compelled to admit that I had committed a high crime'.<sup>72</sup> After the Civil War, the focus of Indian dispossession switched to the Plains, where removal morphed into the cognate policy of reservation.<sup>73</sup> As Robert Trennert has observed, the early reservation policy, which sought to protect White travellers, was necessitated by the fact that the more mobile people of the Plains (who 'moved easily from one location to another, had no permanent villages or agricultural fields for whites to destroy, and were usually able to choose between battle or retreat as the situation demanded'<sup>74</sup>) needed to be handled differently. Through this shift, however, the strategic essentials remained the same. To exchange the buffalo road for the cow road, Plains Indians had to be 'settled on fixed reservations, since only then could their tribal land be assigned to individuals'.<sup>75</sup>

There was one major difference between allotment and removal, however. Whatever treaties may have provided, and regardless of Indian agents' promises, the proponents of removal saw it as a transitional device. A creature of the frontier, removal was also short-lived as a bounded historical phase. To put Jefferson's idea into practice required the existence of territory that was included in the United States but still unclaimed by its citizens. Outside New Orleans and its environs, most of the vast swathe of Indian land, dotted with forts and trading posts, that the United States had acquired through the Louisiana Purchase was rawly discovered by the French and/or the Spanish and not yet appropriated by White people. Indeed, the commissioning of Lewis and Clark's expedition to map the unknown territory between the Mississippi and the Pacific demonstrated just how inchoate was the sovereignty that the nation had bought from Napoleon.<sup>76</sup>

With the instantaneity of discovery, the Louisiana Purchase theoretically doubled the size of the nation. In the space thus opened up, removal mediated between dominion and possession, exchanging native title for a contractual substitute that obtained under the legal system of the United States. Excisions, repeat removals and the

enforced sharing of territory granted more than once by different treaties were the practical face of removal's temporariness, which kept time with the westward march of the nation. Allotment was increasingly offered as an alternative to this demoralising cycle. In the end, it became the only alternative. There was a limit to the West, which was anyway moving in from the Pacific as well, and this imposed a final limit on removal and reservation.

Territorial expansion could override the most cherished of ideological objectives. This not only applied to Indians. When large expanses beckoned, even Jefferson and Jackson's hallowed yeoman farmer could be hustled out of the way by absentee speculators.<sup>77</sup> Displaced by speculators, many smallholders found themselves steered into manufacturing industry to provide a market for the agricultural surplus. Jackson's manufacturing-oriented 'tariff of abominations' maintained this industry.<sup>78</sup> Young documented how, in the wake of Indian removal, Jacksonian policies favoured speculators over settlers. Driven to recoup the cost of removal, the government 'made a consistent practice of offering more land for sale each year than could possibly be purchased [by settlers... This] threw large areas into the market before many settlers had realized enough from their crops to purchase their claims'.<sup>79</sup> The frontier was led from behind.

On the passing of the frontier, removal lost its function. Not so allotment. Rather, the demise of removal meant that assimilation was the only one of these complementary strategies to remain viable, a situation that was congenial to the renewed currency of environmentalist ideology.<sup>80</sup> As the primary instrument of assimilation, the allotment program intensified accordingly. Allotment focused on the individual, whom it not only stripped of land. Increasingly, it also sought to strip individuals of their Indian identity. In seeking to produce assimilable individuals, the programme sought to eliminate a collectivity that was separately constituted from and not contained within the bounds of the social contract that Europeans had imported with them. Indians would become White in a way that went beyond colour. The key attribute was individuality. Over the frontier, the US government's primary unit of Indianness had been the tribe. The number of individuals comprising it had been secondary. What had counted was the tribal

domain, which was collectively held. Treaties exchanged this for land that was as yet uncovered by Whites, sometimes breaking individual parcels down into allotments that could smooth the path of removal (initially, as an inducement to signatories).<sup>81</sup> In the post-frontier era, however, when eliminatory discourse focused exclusively inwards, beneath the tribal surface to the individual Indian below, the numbers became crucial. The discourse of elimination came to focus on the reduction of Indians as *Indians*, rather than on the geographic displacement of Indian tribes.

Allotment, in sum, had two inseparable ends: the abolition of tribal government and the assimilation of the individual Indian. It was not so much an alternative to removal as its completion. Thus we do not encounter it in isolation, as simply a form of land tenure. Rather, allotment was invoked as a universal antidote for all things Indian. The erasure of Indianness was generally depicted contractually, as a kind of reciprocity. Jefferson's version of reciprocity was an exchange: land for civilisation ('what they can spare and we want, for what we can spare and they want'<sup>82</sup>). Jefferson instructed his Indian superintendent that, where the prospect of civilisation offered inadequate inducement, more tangible considerations might tempt Indians into debt, which they could discharge with their land.<sup>83</sup> Jackson, characteristically, was more direct, extending the principle of individual allotment to the payment of tribal annuities that were due under treaties. The intention was 'to reduce the power of Native leaders and to prevent the establishment of tribal treasuries by such nations as the Cherokees' – who, as Michael Green goes on to note, were currently engaged in preparing the case of *Cherokee v. Georgia*.<sup>84</sup> In terms of directness, however, few exchanges can compare with General Sanborn's offer of allotments to the Arapo and Cheyenne in compensation for the Sand Creek massacre.<sup>85</sup> Later in the century, proponents of the Dawes Act were hardly less calculating. Colonel Richard Pratt estimated that allotted Indians could be assimilated in a mere three to five years so long as they were evenly spread (which would 'only make nine Indians to a county throughout the United States'<sup>86</sup>). Justice William Strong concurred: 'I would, if I had my way in the matter, plant no allotment of an Indian family within 10 miles of another'.<sup>87</sup> Consistently enough, some of the blessings that would accrue to dispersed Indians from their bargain with civilisation had a distinctly Hobbesian quality. After all,

one of the features that distinguished the 'Five Civilized Tribes' (and complicated matters for missionaries) was that some of them had adopted the European practice of enslaving Black people. By Albert Gallatin's mischievous reckoning, 'the number of plows in the five tribes answered for the number of able bodied negroes'.<sup>88</sup> More generally, civilisation could signify an awkwardly unchristian selfishness. In 1831, for instance, Indian Affairs Commissioner Elbert Herring complained that Indians lacked the '*meum* and *tuum* in the general community of possessions, which is the grand conservative principle of the social state'.<sup>89</sup> With or without his Latin, however, *homo oeconomicus* could hardly have had a more committed spokesman than Senator Dawes himself, who reported to the Friends of the Indian in 1885 that a chief of one of the 'Five Civilized Tribes' had told him 'that there was not a family in the whole Nation that had not a home of its own':

There was not a pauper in the Nation, and the Nation did not owe a dollar. It built its own capitol [...] and it built its schools and its hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common [...] There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress.<sup>90</sup>

The paradox of civility apart, Dawes' remark reveals a feature of allotment that Jefferson had recognised: Indians' civilisation would come after, rather than before, their loss of land.<sup>91</sup> The civilising process produced a faster rate of land acquisition than had previously been achieved by military means. In the half century from 1881, the total acreage held by Indians in the United States fell by two thirds, from just over 155 million acres to just over 52 million.<sup>92</sup> A consequence was the emergence of another feature of civilisation: class. As D'Arcy McNickle, who knew first-hand, observed: 'In each allotted reservation a class of landless, homeless individuals came into existence and, having no resources of their own, doubled up with relatives and intensified the poverty of all'.<sup>93</sup> The bare figures only

tell part of the story, since the land that Indians did manage to retain was disproportionately marginal or useless for agricultural purposes.<sup>94</sup>

Accordingly, the idea that there is tension between the strategies of assimilating Indians and of either removing or segregating them misses the fundamental reality that, as settler colonialism, all Indian policy is subordinate to the overriding imperative of territorial acquisition. As we have just seen, beneath the manifest disparity between removal, which separated Indians from their land, and allotment, which assigned Indians to individual portions of land, there lay a deeper policy continuity. When we investigate the post-frontier discourse of blood quanta, the reverse is the case. Here, an apparent continuity is deceptive, since the separating out of particular 'half-breeds' for special treatment in nineteenth-century treaties actually served a different purpose from the racial arithmetic that emerged at the end of the nineteenth century in the course of implementing the Dawes-era programme of Indian assimilation that centred on general allotment. In this case, the appearance of continuity should not distract us from the wholesale shift in the techniques of Indian elimination that the passing of the frontier inaugurated. The final boundary of the Indian domain was Indianness itself, persisting within every individual who remained Indian. In the end, blood quanta crossed even this boundary, allotting the Indianness beneath the skin. To round off our survey of ways in which a variety of settler colonial strategies supplemented one another in post-frontier US Indian policy, therefore, we turn now to the ostensibly non-territorial strategy of blood quantum requirements.

## **BLOOD QUANTA**

In the wake of the frontier, it made little difference whether Indians had been removed to other tribes' homelands or confined to a portion of their own. They were on reservations, and there was nowhere else to put them. Thus treaties could no longer serve the purpose of converting Indian homelands into so many parts of the United States. As such, they were historically as well as strategically temporary. A Turner-esque outgrowth of expansion, the treaty was

endemic to the nineteenth century. The end of the frontier received symbolic, if slightly premature, expression on 3 March, 1871, when Congress resolved that: 'No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty'.<sup>95</sup> The era of treaty-making with Indian tribes was formally over. This is not to say that the years 1870 and 1872 can be distinguished by a hiatus in the conduct of Indian affairs. In the historical long-run, however, as a marker of the final internalisation of Indian societies, the importance of the end of treaty-making can hardly be overstated. In driving a wedge between Indian affairs and international law, the 1871 act consolidated the *Cherokee v. Georgia* judgement. Through being rendered internal, the Indian problem was discursively reconstituted as administrative rather than political.

In the three or four decades after treaty-making was discontinued, the BIA demonised the tribal governments it had previously relied on to deliver treaties and focused on the improvable individual, whose individuality corresponded to a particular fragment of the tribal estate. The outcome was a two-way loss whereby culture and biology supplemented each other. As Senator Higgins put it in Congress: 'It seems to me one of the ways of getting rid of the Indian question is just this of intermarriage, and the gradual fading out of the Indian blood; the whole quality and character of the aborigine disappears, they lose all of the traditions of the race'.<sup>96</sup> Culturally, through what Lewis Meriam, author of the scathing report that heralded the end of the allotment programme, sarcastically dubbed 'the magic in individual ownership of property', Indians would be co-opted out of the tribe, which would be depleted accordingly, and into White society.<sup>97</sup> With every man his own chief, there would be no more Indians. Culture, biology and territoriality converged on the modern discourse of blood quanta, which originated in the 1890s in the immediate context of implementing general allotment. Once federal reservation managers were required to register tribal members for the purpose of allocating individual land holdings under the Dawes legislation, the catch-all 'half-breed' category, which had previously served as an indiscriminate designator of genetic admixture, began to acquire mathematical refinement. Five years after the Dawes Act, Indian Affairs Commissioner T. J. Morgan

distinguished this increasing refinement from the less exacting quantifications of the preceding era: 'under date of July 5, 1856, Attorney-General Cushing expressed the opinion [...] that half-breeds (and in his opinion he seems to use the expressions half-breeds and mixed-bloods interchangeably), should be treated by the executive as Indians in all respects so long as they retain their tribal relations'. As if to mark the transitional moment, however, Morgan went on to observe, in the very style he had just deprecated in Cushing, that: 'One of the most intelligent Indians known in the history of our dealings with the Indians was John Ross, a Cherokee chief, who was a half-breed'.<sup>98</sup>

As a technique of elimination, assimilation is more effective than either homicide or a spatial device. Unlike homicide, it does not jeopardise settler social order, since the policy is invariably presented, in philanthropic terms, as offering Natives the same opportunities as are available to Whites. In the post-frontier era, a too-public reliance on earlier, more direct modes of elimination would have conflicted with the establishment and legitimation of the rule of law among a diverse and potentially unruly immigrant populace that was still in the making. Correspondingly, unlike the spatial techniques of removal and/or confinement, assimilation is seen as permanent and not susceptible to the settler land-hunger that sooner or later arrives at the boundaries of the Native enclave. Above all, though, assimilation is total. In neutralising a seat of consciousness, it eliminates a competing sovereignty. Confined Natives, relatives and descendants of killed Natives, remember their dispossession. That memory inscribes the foundational violence of settler democracy. Assimilated Natives, by contrast, do not even exist. There are only White people, settlers, bereft of memory.<sup>99</sup> Or so might the Native Administrator's wish be fulfilled. Natives can see things – and, more to the point, act on things – in other ways.<sup>100</sup> Resistance can, however, be counterproductive, as in the case of those who boycotted the Dawes allotment rolls and thereby disinherited their descendants.<sup>101</sup>

The allotment policy was formally discontinued by the New Deal reforms associated with John Collier's dynamic stint as Commissioner of Indian Affairs, which enshrined the principle of tribal self-government. To its undeniable credit, the 1934 *Indian*

*Reorganization Act* put an end to the catastrophic process of tribal allotment and returned surplus tribal lands that had yet to be sold off. It also curtailed the sale of tribal assets to outsiders. In addition, the act and related legislation vouchsafed Indians' freedom of religion and speech, established a fairer criminal justice system on reservations and provided funds for land acquisition and economic development, among other improvements.<sup>102</sup> All this came at a price, however. Collier's vision for tribal organisation reflected his own Pueblo romance, a 'Red Atlantis' that he had discovered during a sojourn in New Mexico in the early 1920s. In Robert Berkhofer's words, the Pueblos became Collier's 'personal countercultural utopia'.<sup>103</sup> Nonetheless, tribes that reorganised under the act found themselves adopting a distinctly Western style of governance by way of the BIA's model constitutions.<sup>104</sup> Though the act ostensibly abandoned the campaign to assimilate individual Indians, its prescription for reinforcing tribal government was to anglicise it. Constitutions typically introduced tribal elections, specified blood quantum-based membership criteria and included the phrase 'subject to the approval of the Secretary of the Interior', whereby tribes surrendered final say over expenditure or land use.<sup>105</sup> An indication of the practical substance of the act's version of tribal independence is the fact that the reforms were to be administered by the BIA, the single organisation with most to lose from Indian self-government. When tribal authorities evinced unwillingness to exchange their own political processes for Western-style electoral contestation, Collier sought to replace them with imposed political structures of Interior Department design. Indian resistance was widespread. The objections did not just come from traditionalist diehards. Christianised Indians reacted against the threat of being returned to ways of life that they had repudiated, allotted individuals resisted the idea of surrendering their holdings to the collectivity, Oklahoma tribes 'believed they would have to return their oil wells to tribal governments that existed only as paper organizations',<sup>106</sup> while the Navajo, largest tribe of all, politely heard Collier out and wanted nothing to do with his system.<sup>107</sup> For the Department of the Interior, however, one model fitted all. Ten years after the act had been passed, Assistant Solicitor Charlotte Westwood reported to the Senate Committee on Indian Affairs that the degree of standardisation of tribal constitutions was so 'incredibly high' that



the conclusion was warranted that 'these constitutions are nothing more than new Indian Office regulations'.<sup>108</sup>

In an important sense, however, the model constitutions were much more than new BIA regulations. Rather, they fundamentally shifted the level of regulation itself. Whereas, in the allotment era, tribal government had been routinely excoriated, there was no suggestion that it was anything other than an alien entity. The programme had been premised on a protean opposition between tribal organisation and US society. In seeking to dismantle that opposition, the Indian Reorganization Act sought to raise the scope of assimilation from the level of the individual to that of the tribe itself. Where Dawes-style assimilation had reconstituted individual Indians as property-owners, and thus sought to eliminate them as Indians, the Indian Reorganization Act reconstituted tribes into structural conformity with White institutions – which is to say, it sought to eliminate them as *Indian* institutions.

The semblance of tribal consent that had been so important for treaty-making remained central to the process of securing tribal acceptance of the new constitutions, though this did not stop the BIA from defining and circumscribing tribes' powers for them. Bureau interference extended down to a tribe's capacity to define its own membership, a capacity that was usurped by the model constitution's blood-quantum requirement. In response to this requirement, Frank Ducheneaux, leader of the Cheyenne River Sioux, complained that the legislation not only kept Indians under the control of Congress and the Secretary of the Interior but 'limited their sovereign rights which had never been done before formally'.<sup>109</sup>

It is important to widen the narrow focus that would confine the Indian Reorganization Act to US national history. Such a focus, which fails to recognise Indians as colonised peoples, merely endorses the post-frontier depoliticisation whereby Indian affairs were relegated from the realm of international relations to that of municipal administration, a phenomenon that we should be analysing rather than reproducing. The context in which the act was introduced was not merely that of the New Deal United States. Globally, it was an era in which White authorities were introducing systems of indirect or delegated governance with a view to assuaging colonial-nationalist sentiment in the colonies. Collier derived

inspiration for his model of tribal government, which he even termed 'indirect administration', from Lord Lugard's plan for the indirect rule of British colonies.<sup>110</sup> Rather than fostering national independence, Lugard's intention had been to postpone it indefinitely. Thus it is not surprising that the Indians whom Collier recruited to the scheme should have found themselves in an impossible situation. As Laurence Hauptman has noted, "Bureau Indians" had been viewed as traitors by many Indians since the days of Carlos Montezuma'.<sup>111</sup>

The reconfiguration of tribal governments into structural harmony with Euroamerican institutions was tellingly reflected in a concomitant elaboration of blood-quantum criteria. In April 1934, a few weeks before the passing of the Indian Reorganization Act, President Franklin D. Roosevelt signed Executive Order 6676, which, for the first time, formally specified a blood requirement (of a quarter-degree, for employment preference with the BIA).<sup>112</sup> Soon afterwards, Section 19 of the act would provide that:

The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all person who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood.<sup>113</sup>

A major shift has taken place here. Under the Dawes regime, hybridity had furnished a means to fragment the tribe. As of 1 June 1934, however, reservation Indians were no longer segregated into differently-entitled categories. On the contrary, mixed-bloodedness seems to lack implications for tribal membership (though, as we have also seen, the model constitutions would seek to remedy this). Rather than tribal organisation, blood-quantum discourse was now aimed primarily at people living *off* the reservations, the 'all other persons' who were not 'of one-half or more Indian blood'. This takes us back behind Dawes to the removal era, when, as the Ponca example illustrated, those whose mixed-bloodedness had been

without consequence were those who had removed over the frontier. As we have seen, it had been the Ponca's 'half-breed relatives', forsaking the tribe and living among White people, who had been eligible for allotments. In contrast to the assimilable individual, tribal organisation had been incompatible with the structurally regular institutions of US society, which meant that it had to be removed and, when that option was no longer available, dismantled. In the wake of the frontier, when the inassimilable tribe had been encompassed within White society, mixed-bloodedness came to operate within the confines of the tribe, which it served to break up.<sup>114</sup> Under the Indian Reorganization Act, by contrast – at least, as Congress passed it, before the BIA took over its implementation – mixed-bloodedness ceased to operate within the tribe, which was seen as confined to the space of the reservation.<sup>115</sup> But this is entirely consistent since, at the same time, *tribal organisation ceased to be structurally incompatible with the institutions of US society*. In other words, as the frontier receded from living memory, the act achieved the same end as removal had previously achieved. It rid US society of the inassimilable features of the tribe.

The Indian Reorganization Act's incorporation of the reconstituted tribe had profound implications for the complex interplay between civic and geographical space that shaped the racialisation of Indian people. As we have seen, when the destruction of tribal organisation was the primary target of US Indian policy, geographical withdrawal from the tribe had been the key step in an individual's assimilation into White society. Once the reformed tribe had been domesticated, however, the anomaly of an Indianness that persisted beyond its boundaries intensified accordingly. At this point, race ceased to operate on the reservation. There being no further need to eliminate an Indianness that had a licensed place, blood-quantum discourse came to focus exclusively on Indianness as it endured off the reservation. All these years on, the abruptness of the reversal still has the capacity to astonish. Consider the following interchange from the House Committee on Indian Affairs' hearing into the Indian Reorganization Bill:

Senator Thomas: Well, if someone could show that they were a descendant of Pocahontas, although they might

be only five-hundredth Indian blood, they would come under the terms of this act.

Commissioner Collier: If they are actually residing within the present boundaries of an Indian reservation at the present time.<sup>116</sup>

*Off* the reservation, however, one needed to boast half a degree to qualify. Failing this, blood quanta would continue to declassify Indians as they had earlier done within the tribe. When five-hundredth degree descendants of Pocohantas – or, for that matter, quarter-degree people who had qualified for preferential BIA employment under Roosevelt's Executive Order – passed over the reservation boundary, therefore, they changed colour. Indians with African ancestry turned from Red to Black. So long as they did not possess a single drop of Black blood, other Indians could turn White. Any colour so long as it wasn't Red. There could hardly be a clearer example of race intensifying in White social space. Such anomalies reflect the persistence of settler colonial thinking in the New Deal reforms, which located Indianness in a confined realm that was not merely geographical (the physical space of the reservation). By the same token, the Indian Reorganization Act's incorporation of the tribe into structural conformity with its civic environment culminated the racialisation of Indian people.

There could be no more unstable racial identity than the one that transforms itself, trickster-like, at the reservation gate. Nor could the contrast with the immutability of Blackness be more complete. As I have argued elsewhere, instability – susceptibility to being changed into something else – is a distinctive attribute of Indianness in US settler colonial discourse.<sup>117</sup> In comparison to this extreme, the nineteenth-century savagery that was either located or removable over the frontier was hardly unstable at all – as noted, Indians' incapacity for agriculture figured as irredeemable in removalist propaganda. Subsequently, on the basis of Dawes-era logic, throughout the relentless attack against it, the tribe still incubated an alterity that was contrapuntal to White society. With the Indian Reorganization Act, however, the Indian problem became

finally contained. This ultimate end to the frontier, the most territorial of consummations, was inscribed in the language of blood quanta.

## **CONCLUSION**

History cautions us to guard against appearances. As co-products of the settler colonial logic of elimination, removal and assimilation conduce to a common end. By the same token, Indian reservations are not comparable to Jim Crow segregation, any more than land rights are comparable to apartheid. Indeed, the reverse is the case: for all their limitations, reservations and land rights are concessions achieved through anticolonial resistance rather than colonially imposed systems of oppression. Correspondingly, Black Americans' civil-rights era campaign to be included on equal terms with White society promoted a goal – assimilation – that the Native movement in the USA, as in Australia, was premised on rejecting. Indeed, as a number of scholars have noted, the Fifteenth Amendment, fruit of the overthrow of slavery, could theoretically jeopardise Indians' distinctive rights, since these could be interpreted as racially based.<sup>118</sup> The liberal discomfort occasioned by tensions between Blacks and Indians reflects a universalism that takes for granted a pastiche of difference – colours, races, minorities, ethnicities – on a multicultural canvas which levels the varied histories that produced these differences in the first place. Historically analysed, however, these apparent conflicts of sectional interest emerge as traces of the different but complementary roles into which the conquered populations concerned were co-opted by colonial settlers. In the cases of Indians and Black people in the USA, contemporary differences testify to the distinct historical experiences of territorial expropriation and chattel slavery respectively. These distinct modes of co-optation together subtended the overarching system of Euroamerican settler colonialism, so solidarities should be framed at this more encompassing level.

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## Wolfe, 'After the Frontier'.

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## NOTES

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<sup>1</sup> Also, or alternatively, and at different times, termed the Office of Indian Affairs or the Indian Office. For simplicity, I shall refer to this institutional continuity as the BIA.

<sup>2</sup> The constructed nature of race is a truism. I address the question of why liberal-democratic discourse should select a numerical idiom for talking about political exclusion in an entry entitled 'National Minorities' that is to appear in P. Stearns (ed.), *Oxford Encyclopedia of the Modern World* (New York: Oxford University Press, forthcoming).

<sup>3</sup> I shall develop this call, which is also flagged in my 'Race and the Trace of History' article, in a paper to be presented at the American Studies Association conference in Baltimore in October 2011 entitled 'History and Solidarity: Beyond Identity Politics'.

<sup>4</sup> Wolfe, Patrick, 'Corpus Nullius: The Exception of Indians and Other Aliens in US Constitutional Discourse', *Postcolonial Studies* 10 (2007), pp. 137, 140.

<sup>5</sup> For varying analyses and discussions of the principal formulations of the misleadingly named (in the singular) doctrine of discovery, see, e.g., Anthony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law', *Harvard International Law Journal* 40 (1999), pp. 1-80; Larissa Behrendt, T. Lindberg, R. J. Miller and J. Ruru, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Melbourne: Oxford University Press, 2010); Andrew Fitzmaurice, *Humanism and America. An Intellectual History of English Colonisation, 1500-1625* (Cambridge: Cambridge University Press, 2003); Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001), esp. pp. 148-66; David Kennedy, 'Primitive Legal Scholarship', *Harvard International Law Journal* 27 (1986), pp. 1-98; Mark F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longman, Green & Co., 1926); Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York, Oxford University Press, 1990), pp. 233-86.

<sup>6</sup> Wolfe, 'Corpus Nullius', p. 134.

<sup>7</sup> Francis P. Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts 1790-1834* (Cambridge, MA: Harvard University Press, 1962), p. 13; Robert N. Clinton, 'The Proclamation of 1763: Colonial Prelude to Two Centuries of Federal-State Conflict over the Management of Indian Affairs', *Boston University Law Review* 69 (1989), p. 374.

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<sup>8</sup> At the level of the individual colony, the division can be traced back to the 1758 treaty of Easton. Daniel M. Friedenbergh, *Life, Liberty, and the Pursuit of Land: The Plunder of Early America* (Buffalo, NY: Prometheus, 1992), p. 105.

<sup>9</sup> Quoted in Walter H. Mohr, *Federal Indian Relations 1774-1788* (Philadelphia: Pennsylvania University Press, 1933), p. 171.

<sup>10</sup> Annie H. Abel, 'The History of Events Resulting in Indian Consolidation West of the Mississippi River', *American Historical Association Annual Report for 1906*. 2 vols. (Washington, DC: AHA 1906), vol. 2, p. 244.

<sup>11</sup> *US Statutes at Large*, vol. 2: 283-89. Available online at <[www.yale.edu/lawweb/avalon/statutes/2us283htm](http://www.yale.edu/lawweb/avalon/statutes/2us283htm)>, viewed 12 February 2011, at p. 6.

<sup>12</sup> Removal in the North could differ significantly from the experience of the 'Five Civilized Tribes'. For the purpose of analysing the strategic logic of removal, however, my discussion focuses on the most concerted, systematic, and well-known campaign in the removal agenda.

<sup>13</sup> *US Statutes at Large*, 4 (28 May 1830), pp. 411-12.

<sup>14</sup> See, e.g., the 1838 treaty with the New York Indians. Charles J. Kappler (ed.), *Indian Treaties 1778-1883 (Indian Affairs: Laws and Treaties, vol. 2)* (Mattituck, NY: Amereon House, 1972 [1904]), pp. 502-516. As a result of this treaty, 'As in the Cherokee "Trail of Tears", members of the New York tribes died, en route to or in Indian territory, of cholera, exposure to the elements, or starvation': Laurence M. Hauptman, *Tribes & Tribulations: Misconceptions about American Indians and Their Histories* (Albuquerque, NM: New Mexico University Press, 1995), p. 48. See also Felix S. Cohen, *Handbook of Indian Law* (Washington, DC: Government Printing Office, 1941), pp. 53-62.

<sup>15</sup> This not only applied to the official military. Following Samuel Colt's patenting of the first revolver in 1836, the culture of the gun spread very rapidly among US households, especially on the frontier, a development that was intensified by the civil war's bringing 'guns into the home, making them part of the domestic environment and an unquestioned member of the American family'. See Michael A. Bellesiles, 'The Origins of Gun Culture in the United States, 1760-1865', *Journal of American History* 83 (1966), pp. 425-55. Quotation at p. 455.

<sup>16</sup> See, e.g., Richard M. Brown, 'Violence', in A. Milner et al. (eds), *The Oxford History of the American West* (New York: Oxford University Press, 1994), pp. 392-425; Alvin M. Josephy, *The Civil War in the American West* (New York: Knopf, 1991); Robert M. Utley, *The Indian Frontier of the American West, 1846-1890* (Albuquerque, NM: New Mexico University Press, 1984); Richard White, *'It's Your Misfortune and None of My Own': A New History of the American West* (Norman, OK: Oklahoma University Press), pp. 94-109.

<sup>17</sup> Richard Irving Dodge, *Our Wild Indians: Thirty-Three Years' Personal Experience Among the Red Men of the Great West...* (New York: Archer, 1882), p. 644.

<sup>18</sup> Paul W. Gates, 'Indian Allotments Preceding the Dawes Act', in John G. Clark (ed.), *The Frontier Challenge: Responses to the Trans-Mississippi West* (Lawrence, KS: Kansas University Press, 1971), pp. 142-43, 158-59; G. Edward White, with Gerald Gunther, *The Marshall Court and Cultural Change, 1815-35* (New York: Oxford University Press, 1988), p. 712.

<sup>19</sup> 'A few perhaps might linger around the site of their council-fires; but almost as soon as the patents could be issued to redeem the pledge made to them, they would dispose of their possessions and rejoin their countrymen', Anon. [Lewis Cass], 'Removal of the Indians', *North American Review* 30, January 1830, p. 121.

<sup>20</sup> Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln, NE: Nebraska University Press, 1975), p. 83.

<sup>21</sup> As Mr Justice Johnson put it in his concurring judgment in *Cherokee v. Georgia*, 'The hunter state bore within itself the promise of vacating the territory, because when game ceased, the hunter would go elsewhere to seek it. But a more fixed

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state of society would amount to a permanent destruction of the hope, and, of consequence, of the beneficial character of the pre-emptive right': *The Cherokee Nation vs. The State of Georgia* (30 US. 5 Pet. 1) 1831, p. 23.

<sup>22</sup> Gerald M. Sider, *Lumbee Indian Histories: Race, Ethnicity, and Indian Identity in the Southern United States* (New York: Cambridge University Press, 1993), p. 208.

<sup>23</sup> Quoted in Michael P. Rogin, *Fathers and Children: Andrew Jackson and the Subjugation of the American Indian* (New York: Knopf, 1975), p. 216.

<sup>24</sup> '[Indians] know that they will find enemy hordes in this new wilderness, and to resist them they no longer have the energy of barbarism, without having yet acquired the force of civilization', Alexis de Tocqueville, *Democracy in America* (Chicago: Chicago University Press, 2000 [1835]), p. 322.

<sup>25</sup> Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians*. Second edition. (Norman, OK: Oklahoma University Press, 1953), p. 194.

<sup>26</sup> Foreman, *Indian Removal*, p. 200.

<sup>27</sup> Other Western Cherokee had been there since a treaty agreed in 1828. Foreman, *Indian Removal*, p. 249.

<sup>28</sup> Foreman, *Indian Removal*, p. 249.

<sup>29</sup> *Cherokee Phoenix*, 28 February 1828.

<sup>30</sup> Abel, *Indian Consolidation*, p. 360.

<sup>31</sup> Abel, *Indian Consolidation*, p. 360; Foreman, *Indian Removal*, p. 20; Mary Young, 'Racism in Red and Black: Indians and Other Free People of Color in Georgia Law, Politics, and Removal Policy', *Georgia Historical Quarterly* 73 (1989), pp. 492-518, esp. p. 506.

<sup>32</sup> Joseph C. Burke, 'The Cherokee Cases: A Study in Law, Politics, and Morality', *Stanford Law Review* 21 (1969), p 500-31; Timothy A. Garrison, *The Legal Ideology of Removal: The Southern Judiciary and the Sovereignty of Native American Nations* (Athens, GA: Georgia University Press, 2002), pp. 106, 170.

<sup>33</sup> 'And the new President [Jackson] did not scruple to assert and reiterate the untruth that the Creeks and Cherokees respectively were attempting to "erect an independent government within the limits of Georgia and Alabama", ringing all possible changes on the falsehood, and gravely quoting from the Constitution that "No new State shall be formed or erected within the limits of any other State", as precluding the maintenance by the Creeks and Cherokees of their governments in territories which they had possessed and governed long before Georgia had been colonized, or the name Alabama invented', Horace Greeley, *The American Conflict...* 2 vols. (Hartford, CT: O.D. Case, 1864-66), vol. 1, p. 104. Greeley would, of course, have been on firmer ground to stress the novelty of the name Georgia.

<sup>34</sup> 'And now, when we begin to suspect, that the white man and the red man cannot live together, we find no country where we can plant, and nourish, and protect those children of misfortune, until we pass the farthest limits of the governments formed beyond the Mississippi': Cass, 'Removal of the Indians', p. 109.

<sup>35</sup> Charles M. Segal and David C. Stineback, *Puritans, Indians, and Manifest Destiny* (New York, G.P.: Putnam's Sons, 1977), p. 221.

<sup>36</sup> 'The practice of buying Indian lands is nothing more than the substitute of humanity and benevolence, and has been resorted to in preference to the sword, as the best means for agricultural and civilized communities entering into the enjoyment of their natural and just right for the benefits of the earth': Wilson Lumpkin [soon to be Governor of Georgia], *The Removal of the Cherokee Indians from Georgia. Including His Speeches in the United States Congress on the Indian Question*. 2 vols., W. J. DeRenne, (ed.). (Wormsloe, GA: Dodd, Mead & Co., 1907), vol. 1, p. 83.

<sup>37</sup> *American State Papers, Indian Affairs* (Washington, DC, 1834), vol. 2, p. 722.

<sup>38</sup> Abel, 'Indian Consolidation', pp. 254-55.

<sup>39</sup> Rogin, *Fathers and Children*, p. 179.

<sup>40</sup> Charles F. Wilkinson and Eric R. Biggs, 'The Evolution of the Termination Policy', *American Indian Law Review* 5 (1977), p. 139.



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<sup>41</sup> Nancy C. Carter, 'Race and Power Politics as Aspects of Federal Guardianship Over American Indians: Land-Related Cases, 1887-1924', *American Indian Law Review* 4 (1976), p. 198.

<sup>42</sup> Mary Young, 'Pagans, Converts, and Backsliders, All: A Secular View of the Metaphysics of Indian-White Relations', in Calvin Martin (ed.), *The American Indian and the Problem of History* (New York: Oxford University Press, 1987), p. 77.

<sup>43</sup> In 1957, for example, Senator Arthur Watkins of Utah, the indefatigable champion of tribal termination, would dub the policy the 'Freedom Program': 'Following in the footsteps of the Emancipation Proclamation of ninety-four years ago, I see the following words emblazoned in letters of fire above the heads of the Indians - *THESE PEOPLE SHALL BE FREE!*', Arthur V. Watkins, 'Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Person', *Annals of the American Academy of Political and Social Science* 311 (1957), p. 55.

<sup>44</sup> In 1877, the Supreme Court upheld an earlier judgment that the Pueblo Natives were not Indians because they were 'a peaceable, industrious, intelligent, honest, and virtuous people...Indians only in feature, complexion, and a few of their habits' (*U.S. v. Joseph* [94 US 616, 1876], p. 616). Thirty six years later, though, on the basis of reports of drunkenness and dancing on the Pueblos, the Court changed its mind, deeming them 'simple, uninformed, and inferior' (*United States, Pltf in Err., v. Felipe Sandoval* [231 US 28] 1913, pp. 39-47).

<sup>45</sup> Theda Perdue, *'Mixed Blood' Indians: Racial Construction in the Early South* (Athens, GA: Georgia University Press, 2003), pp. 70, 95-6. See also Thomas N. Ingersoll, *To Intermix With Our White Brothers: Indian Mixed Bloods in the United States from Earliest Times to the Indian Removals* (Albuquerque, NM: New Mexico University Press, 2005), pp. 225, 227. Concerning Georgia and the Cherokee in particular, Governor Wilson Lumpkin repeatedly charged that resistance to removal was encouraged by a combination of mixed-bloods and northern troublemakers: 'Those [Cherokee] who have emigrated [to Arkansas] are delighted with their new homes, and most of their brethren who remain in the States would gladly improve their present condition by joining them; but their lordly chiefs, of the white blood, with their Northern allies, "will not let the people go"', Lumpkin, *Removal of the Cherokee Indians*, p. 61. See also Mary E. Young, 'Racism in Red and Black: Indians and Other Free People of Color in Georgia Law, Politics, and Removal Policy', *Georgia Historical Quarterly* 73 (1989), pp. 492-518.

<sup>46</sup> Quoted in Garrison, *Legal Ideology of Removal*, p. 149. See also Mary Young, 'John Ross: Cherokee Chief and Defender of the Nation', in Michael A. Morrison (ed.), *The Human Tradition in Antebellum America* (Wilmington, DE: Scholarly Resources, 2000), pp. 115-30.

<sup>47</sup> A disconcerting number of contemporary historians have echoed this theme. Robert Remini, for instance, an indefatigable apologist for Jackson, never tires of formulas such as: 'John Ross, a blue-eyed, brown-haired, mixed-blood who was only one-eighth Cherokee' (Remini, *Andrew Jackson & His Indian Wars* [New York: Viking, 2001], p. 258); 'John Ross, the blue-eyed principal chief of the Cherokee Nation, stood before the blue-eyed, white-haired Chief Magistrate of the American nation [Jackson]. Ross was a Scot with only a dash of Cherokee blood in his veins - one eighth to be exact' (Remini, *Andrew Jackson and the Course of American Democracy, 1833-1845. Vol. 3 [Andrew Jackson and the Course of American Empire]* [New York: Harper & Row, 1984], p. 293); 'Ross was a Scot with only a dash of Cherokee blood in his veins - one-eighth to be precise' (Remini, *The Jacksonian Era* [Arlington Heights IL, 1989], pp. 45-46). For an incisive critique of Remini's partisanship regarding Jackson, see Hauptman, *Tribes and Tribulations*, pp. 40-48. In his compendious *The Great Father: The United States Government and the American Indians* (Lincoln, NE: Nebraska University Press, 1986) (abridged edition), Francis Paul Prucha introduces Ross as 'John Ross, a mixed-blood who was one-eighth Cherokee' (p. 86). Like Remini, Father Prucha, who is also a Jackson apologist,

hardly distances himself from his subject: 'Jackson was convinced from his observation of the political incompetence of the general run of Indians that the treaty system played into the hands of the chiefs and their white and half-breed advisers to the detriment of the common Indians' (Prucha, 'Andrew Jackson's Indian Policy: A Reassessment', *Journal of American History* 56 [1969], p. 533). Prucha's apologia consists principally in taking Jackson's rhetoric at face value, as if 'by their words shall ye know them' could furnish a viable methodology for (of all histories) Indian history. Donald Cole has pointed to the partiality of Prucha's defence of Jackson: 'Prucha [...] documents Jackson's supposed generosity toward the Indians by quoting from the president's [Jackson's] letter to John Coffee about the Chickasaw removal in which he referred to the "liberality" and "justice" of his policies. Prucha neglects, however, to include the part in which Jackson congratulated Coffee for getting the Indians to move at their own expense – not a good example of generosity' (Donald B. Cole, *The Presidency of Andrew Jackson* [Lawrence, KS: Kansas University Press, 1993], p. 118).

<sup>48</sup> Mary E. Young, *Redskins Ruffleshirts and Rednecks – Indian Allotments in Alabama and Mississippi 1830-1860* (Norman, OK: Oklahoma University Press, 1961), pp. 22-3, 27.

<sup>49</sup> Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajo* (Lincoln, NE: Nebraska University Press, 1983), p. 138.

<sup>50</sup> Young, *Redskins Ruffleshirts and Rednecks*, p. 29 (where, as also on p. 27, Peter Pitchlynn is incorrectly named John). John Pitchlynn, a White trader, was Peter Pitchlynn's father. See Donna L. Akers, 'Peter P. Pitchlynn: Race and Identity in Nineteenth-Century America', in Michael A. Morrison (ed.), *The Human Tradition in Antebellum America* (Lanham, MD: Rowman and Littlefield, 2000), pp. 131-32; R. David Edmunds, 'National Expansion from the Indian Perspective', in Frederick E. Hoxie (ed.), *Indians in American History: An Introduction* (Arlington Heights, IL: Harlan Davidson, 1988), p. 167; Foreman, *Indian Removal*, p. 27.

<sup>51</sup> Young, *Redskins Ruffleshirts and Rednecks*, p. 28.

<sup>52</sup> '[O]r in which, to reverse the picture, the observer is being carried in the stream of duration continuously away from a past and into a future', Benjamin Lee Whorf, in John B. Carroll (ed.), *Language, Thought, and Reality. Selected Writings of Benjamin Lee Whorf* (New York: M.I.T. Press/Wiley & Sons, 1956), p. 57.

<sup>53</sup> This continental statement is not intended to occlude the concurrent expansion of what might be termed the maritime frontier, or 'overseas America', into the Philippines, Hawai'i, Cuba, Puerto Rico and elsewhere.

<sup>54</sup> Kappler, *Indian Treaties*, p. 774. Treaty precedents extend at least as far back as article 8 of the 1817 treaty with the Wyandot, Seneca, Delaware, Shawnee, Potawatomie, Ottawa and Chippewa, which provided ('At the special request of the said Indians') for allotment in the case of 'persons hereinafter mentioned, all of whom are connected with said Indians, by blood or adoption', who included, e.g., 'the children of the late William M'Collock [...] who are quarter-blood Wyandot Indians, one section [...] To Anthony Shane, a half-blood Ottawas Indian, one section of land': Kappler, *Indian Treaties*, pp. 147-48.

<sup>55</sup> The Ponca *Métis* were by no means the only example: 'A common provision of treaties negotiated by the Peace Commission of 1867-1868 was a requirement that any subsequent purchase of land from the tribe involved would not be valid unless approved by three-fourths of the adult males of that tribe. To meet this requirement, the government had routinely sought the signatures of mixed bloods to validate purchases of tribal land. Under the circumstances, Commissioner Morgan advised continuing to allow tribes to accept mixed bloods into full membership': William T. Hagan, 'Full Blood, Mixed Blood, Generic, and Ersatz: The Problem of Indian Identity', *Arizona and the West* 27 (1985), p. 314. See also William E. Unrau, *Mixed-Bloods and Tribal Dissolution: Charles Curtis and the Quest for*

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*Indian Identity* (Lawrence, KS: Kansas University Press, 1989), pp. ix, 2, 3. For the Black Seminole, See Kenneth W. Porter, 'Relations Between Negroes and Indians within the Present Limits of the United States', *Journal of Negro History* 17 (1932), pp. 287-367; Laurence Foster, 'Negro-Indian Relationships in the Southeast'. PHD Dissertation (Philadelphia: University of Philadelphia, 1935).

<sup>56</sup> Kenneth W. Porter, *The Negro on the American Frontier* (New York: Arno, 1971).

<sup>57</sup> Charles Wilkinson, *American Indians, Time, and the Law* (New Haven, CT: Yale University Press, 1985), p. 17.

<sup>58</sup> The concept of corporate personhood was first enunciated in 1886 in the Supreme Court case of *Santa Clara County v. Southern Pacific Railroad* (118 U.S. 394, 1886). See Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (New York: Free Press, 2004).

<sup>59</sup> Patrick Wolfe, 'Land, Labor, and Difference: Elementary Structures of Race', *American Historical Review* 106 (2001), pp. 890-91. 'It was inconceivable to the federal officials that a state could be admitted to the Union that did not provide for free commerce with other states, and the communal holding of land struck directly at the personal land tenure system already entrenched in the other states. If an Indian could not sell a tract of land within a state, how could the other states have equal status with the newly admitted Indian state and how could commerce proceed when the best that white citizens might ever achieve within the new Indian state might be the leasing of lands?': Vine Deloria and Clifford M. Lytle, *The Nations Within: The Past and the Future of American Indian Sovereignty* (Austin, TX: Texas University Press, 1984), pp. 24-5. Accordingly, as Father Prucha and Nell Newton both observed, breaking down reservations into individual allotments would remove the impediment to statehood that reservations presented for unadmitted territories. Francis P. Prucha (ed.), *Americanizing the American Indians: Writings by the 'Friends of the Indians' 1880-1900* (Cambridge, MA: Harvard University Press, 1973), pp. 6-7; Nell J. Newton, 'Federal Power over Indians: Its Sources, Scope, and Limitations', *University of Pennsylvania Law Review* 132 (1984), p. 206.

<sup>60</sup> Cole Harris, 'How Did Colonialism Dispossess? Comments from an Edge of Empire', *Annals of the Association of American Geographers* 94 (2004), p. 172.

<sup>61</sup> Quoted in Prucha, *Americanizing the American Indians*, pp. 172-84.

<sup>62</sup> *Messages and Papers of the Presidents*, vol. 15, p. 6672.

<sup>63</sup> 'Many thousands of allotments for more than seventeen million acres had been patented to Indians by 1887', Paul W. Gates, 'Indian Allotments Preceding the Dawes Act', in John G. Clark (ed.), *The Frontier Challenge: Responses to the Trans-Mississippi West* (Lawrence, KS: Kansas University Press, 1971), p. 141; Young, *Redskins Ruffleshirts and Rednecks*.

<sup>64</sup> J. P. Kinney, *A Continent Lost—A Civilization Won. Indian Land Tenure in America* (Baltimore, MD: Johns Hopkins University Press, 1937), p. 6.

<sup>65</sup> William T. Hagan, 'Private Property, the Indian's Door to Civilization', *Ethnohistory* 3 (1956), p. 127.

<sup>66</sup> Nancy Carter asserts that allotments were provided for as early as 1798 (Nancy Carol Carter, 'Race and Power Politics as Aspects of Federal Guardianship over American Indians: Land-Related Cases, 1887-1924', *American Indian Law Review* 4, [1976], p. 237, n. 107), but the only such clause that I can find for that year is Article 10 of the Cherokee treaty of October 2, 1798, which provides for an allotment for the federal agent rather than for any individual Cherokee: Charles J. Kappler (ed.), *Indian Treaties 1788-1883* (New York, 1972 [reprint]), p. 54.

<sup>67</sup> Kappler, *Indian Treaties*, p. 192.

<sup>68</sup> Abel, *Indian Consolidation*, p. 303.

<sup>69</sup> 640 acres is a square mile, or section; 160 acres being known, accordingly, as a quarter-section.

<sup>70</sup> Vine Deloria and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin, TX: Texas University Press, 1999), pp. 60-1, 75.

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<sup>71</sup> Kinney, *Continent Lost*, pp. 114-24; Francis P. Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman, OK: Oklahoma University Press, 1976), p. 230.

<sup>72</sup> G.W. Manypenny, 'Shall We Persist in a Policy That Has Failed?', *The Council Fire* 8, 11 (1885), p. 156.

<sup>73</sup> Lewis Cass, at the time war secretary in the Jackson administration, had used the term 'reservation' in the course of advocating the removal policy. Cass, 'Removal of the Indians', pp. 66, 68.

<sup>74</sup> Robert A. Trennert, *Alternative to Extinction: Federal Indian Policy and the Beginnings of the Reservation System, 1846-51* (Philadelphia: Temple University Press, 1975), p. 14.

<sup>75</sup> Rennard Strickland, 'Genocide-at-Law: An Historic and Contemporary View of the Native American Experience', *Kansas Law Review* 34 (1986), p. 725.

<sup>76</sup> In common with many others, I have fallen for the myth, which Robert J. Miller has recently exploded, that the Louisiana Purchase was the 'greatest real estate deal in history'. As I put it, Thomas Jefferson bought 'approximately one-third of the present-day continental United States at a knock-down price from Napoleon' (Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research*, vol. 8, 2006, pp. 387-409, p. 399). In fact, as Miller has pointed out (*Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark, and Manifest Destiny* [Lincoln, NE: Nebraska University Press, 2008], pp. 71-72), the US government was subsequently obliged to pay out enormous sums to Indian groups for fee-simple title to (as opposed to dominion over) the lands affected by the Purchase, sums that do not include the vast military expenditure that was required to bring Indian 'representatives' to the treaty table to transfer those titles in the first place. In my defence, I did point out in a footnote (n. 52) that 'What Jefferson bought was French dominion', though I failed to follow through the implications of this observation.

<sup>77</sup> 'Jackson's Indian policy was based on agrarian republican ideals, but it opened the door to the realities of the new economy': Cole, *Presidency of Andrew Jackson*, p. 118. See also Satz, *American Indian Policy in the Jacksonian Era*, pp. 97, 109; Richard Slotkin, *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800-1900* (Norman, OK: Oklahoma University Press, 1985), pp. 110-12, 127.

<sup>78</sup> Since tariffs were seen to encourage retaliatory measures on the part of foreign countries that constituted the primary export market for the plantation economy, they were seen to favour the industrial North at the expense of the South, a division that reinforced the differences over slavery. See, e.g., Louis P. Masur, *1831. Year of Eclipse* (New York: Hill & Wang, 2001), pp. 153-56. In this connection, Indian removal provided an issue that was capable of reconciling northerners such as Jackson's silvertail Vice-President Martin Van Buren and the southern slaveholding interest. Indeed, for Richard B. Latner Indian removal furnished a basis for unifying the fledgling Democratic party: *The Presidency of Andrew Jackson: White House Politics 1829-1837* (Athens, GA: Georgia University Press, 1979), pp. 97-8.

<sup>79</sup> Young, *Redskins Ruffleshirts and Rednecks*, p. 182. See also Daniel Feller, *The Public Lands in Jacksonian Politics* (Madison, WI: Wisconsin University Press, 1984), p. 80; Peter Temin, *The Jacksonian Economy* (New York: Norton, 1969), p. 96. This logic would continue to obtain: 'So long as the need for revenue was the basic influence underlying public-land distribution [in Kansas in the 1850s], no restrictions were placed in the way of large accumulation by speculators, land companies, and other nonsettlers; on the contrary, every effort was made to induce purchasing by them. As a consequence, many million acres went into the hands of these interests, which withheld them for prices beyond the reach of impoverished frontiersmen': Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890* (Ithaca, NY: Cornell University Press, 1966), p. 12.

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<sup>80</sup> Frederick E. Hoxie, *A Final Promise. The Campaign to Assimilate the Indians, 1880-1920* (Cambridge: Cambridge University Press, 1989); Prucha, *Americanizing the American Indians*.

<sup>81</sup> Gates, 'Allotments Preceding the Dawes Act', pp. 145, 148-49.

<sup>82</sup> Quoted (without source, but compare the note following this) in S. Lyman Tyler, *A History of Indian Policy* (Washington, DC: US Dept. of the Interior, 1973), p. 11; Anthony F. C. Wallace, *Jefferson and the Indians: The Tragic Fate of the First Americans* (Cambridge, MA: Harvard University Press, 1999), p. 223.

<sup>83</sup> 'To promote this disposition to exchange lands, which they have to spare and we want, for necessities, which we have to spare and they want, we shall push our trading houses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands', Jefferson to Harrison, in Andrew A. Lipscomb and A. E. Bergh (eds), *The Writings of Thomas Jefferson*. Vol. 10 (Washington, DC: Thomas Jefferson Memorial Association, 1904), pp. 369-71.

<sup>84</sup> Michael D. Green, *The Politics of Indian Removal: Creek Government and Society in Crisis* (Lincoln, NE: Nebraska University Press, 1982), p. 167.

<sup>85</sup> Helen H. Jackson, *A Century of Dishonor: A Sketch of the United States Government's Dealings with Some of the Indian Tribes* (Norman, OK: Oklahoma University Press, 1995 [1885]), pp. 354-55.

<sup>86</sup> Quoted in D. S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman, OK: Oklahoma University Press, 1973 [1934]), p. 67.

<sup>87</sup> Quoted in Otis, *Dawes Act*, p. 67.

<sup>88</sup> Quoted in Perdue, 'Mixed Blood' Indians, p. 65. See also R. Halliburton, *Red Over Black: Black Slavery among the Cherokee Indians* (Westport, CT: Greenwood Press, 1977); Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540-1866* (Knoxville, TN: Tennessee University Press, 1979). Under Article 4 of the Chickasaw removal treaty of 1832, Chickasaw who owned more than ten slaves received an additional section of land: Kappler, *Indian Treaties*, p. 357.

<sup>89</sup> Quoted in Prucha, *Policy in Crisis*, p. 229.

<sup>90</sup> *Lake Mohonk Conference Proceedings* (1885), p. 43, quoted in Otis, *Dawes Act*, pp. 10-11.

<sup>91</sup> Anthony F. C. Wallace, *Jefferson and the Indians*, p. 19.

<sup>92</sup> *Statistical Abstract of the United States* (US Bureau of the Census, Department of Commerce, 1955), p. 180.

<sup>93</sup> McNickle, 'The Indian New Deal as Mirror of the Future', in Ernest L. Schusky (ed.), *Political Organization of Native Americans* (Washington, DC: University Press of America, 1980), p. 108.

<sup>94</sup> By a nice irony, not foreseen at the time, much of this wasteland would later turn out to be rich in mineral deposits.

<sup>95</sup> 16 *Stat.*, 566, c. 120, s. 1.

<sup>96</sup> Congressional Record quoted in Paul Spruhan, 'A Legal History of Blood Quantum in Federal Indian Law to 1935', *South Dakota Law Review* 51 (2006), p. 32.

<sup>97</sup> Lewis Meriam et al., *The Problem of Indian Administration. Summary of Findings and Recommendations* [aka the Meriam Report] (Washington, DC: Institute for Government Research, 1928), p. 7. 'If we can watch our body of dependent Indians shrink even by one member at a time, we may congratulate ourselves that the complete solution is only a question of patience': Francis E. Leupp [former Commissioner for Indian Affairs], *The Indian and His Problem* (New York: Charles Scribner's Sons, 1910), p. 49.

<sup>98</sup> T. J. Morgan, 'What Is An Indian?', in Commissioner of Indian Affairs, *Sixty First Annual Report* (Washington, DC: 1892), p. 34.

<sup>99</sup> The reference is, of course, to Renan's famous remarks ('Qu'est-ce qu'une nation?', in 1882) on nationalist amnesia ('the essence of a nation is that all its people have a great deal in common, and also that they have forgotten a great deal'): Selected and translated in Geoff Eley and Ronald G. Suny (eds), *Becoming National: A Reader* (Oxford: Oxford University Press, 1996), pp. 41-55.

<sup>100</sup> It is crucial not to grant Congressional intentions the status of *faits accomplis*. Indians resisted these measures at every turn, with locally varying degrees of success. Vine Deloria repeatedly complained that scholarship on Indian law (to which we might add Indian policy) has confused prescription and description, as if 'tribes meekly bowed to the dictates of federal actions simply because these actions were clothed in the trappings of law': Deloria, 'Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law', *Arizona Law Review* 31 (1989), p. 205. In the outcome, legal scholarship has represented Indian policy as a self-fulfilling prophecy. The mere passing of the Dawes Act, for instance, is represented as 'bringing about the instantaneous allotment of all Indian lands, without the need for the tribe-by-tribe arm-wrestling that actually took place between tribal authorities and Dawes commissioners in the wake of the Act': Deloria, 'Revision and Reversion', in Calvin Martin (ed.), *The American Indian and the Problem of History* (New York: Oxford University Press, 1987), pp. 84-90. Putting this prescriptive bias down to legal scholarship's dominance of the area, Deloria ('Laws Founded in Justice and Humanity', p. 219) signalled an opportunity for historians: 'How, we may ask, did federal Indian law become part of legal scholarship and not historical scholarship?'

<sup>101</sup> Kent Carter, 'Snakes & Scribes: The Dawes Commission and the Enrollment of the Creeks', *Prologue Magazine* (National Archives) 29, 1 (1997). Available online at <[www.archives.gov/publications/prologue/1997/spring/dawes-commission-1.html](http://www.archives.gov/publications/prologue/1997/spring/dawes-commission-1.html)>, viewed 12 February 2011.

<sup>102</sup> J. Collier, 'Indian Religious Freedom and Indian Culture' (Interior Department Circular no. 2970, January 1934). See Kenneth R., Philp, *John Collier's Crusade for Indian Reform, 1920-1954* (Tucson, AZ: Arizona University Press, 1977), pp. 131-32; Jay B. Nash (ed.), *New Day for the Indians: A Survey of the Workings of the Indian Reorganization Act of 1934* (New York: Academy Press, 1938), p. 26.

<sup>103</sup> Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage, 1979), p. 178.

<sup>104</sup> Though Graham D. Taylor repeatedly refers to the Bureau's model constitution (*The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* [Lincoln, NE: Nebraska University Press, 1980], pp. 37, 96 and elsewhere), Elmer Rusco denies that one existed ('The Indian Reorganization Act and Indian Self-Government', in Eric D. Lemont [ed.], *American Indian Constitutional Reform and the Rebuilding of Native Nations* [Austin, TX: Texas University Press, 2006], pp. 62, 73-4). But Rusco, whose intention is to defend Collier, presents no evidence to discount the possibility that a model constitution was devised in 1935, only a year after the passage of the Indian Reorganization Act, when the Organization Division headed by Joe Jennings was established.

<sup>105</sup> 'Prior to the Indian Reorganization Act, tribes were presented with certain kinds of decisions and they were believed to possess inherent powers to control their domestic affairs. After the Indian Reorganization Act, the Secretary of the Interior was allowed to approve or disapprove the actions of a tribal government in almost every field': Vine Deloria, 'Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law', *Arizona Law Review* 31 (1989), p. 213. Consider, e.g., 'the tribal council shall exercise, subject to review or approval of the Secretary of the Interior, the following powers...': Article IV of the constitution of the Oglala Sioux Tribe of Pine Ridge Reservation, quoted in Russel Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley, CA: California University Press, 1980), p. 117, See also

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Cohen, *Handbook*, p. 130, M. G. Lacey, 'The United States and American Indians: Political Relations', in V. Deloria (ed.), *American Indian Policy in the Twentieth Century* (Norman, OK: Oklahoma University Press, 1985), pp. 92-3; Prucha, *Great Father*, p. 338; E. L. Schusky, *The Right To Be Indian* (San Francisco: Indian Historian Press, 1970), p. 21.

<sup>106</sup> Lawrence M. Hauptman, 'The Indian Reorganization Act', in Sandra L. Cadwalader and Vine Deloria (eds), *The Aggressions of Civilization: Federal Indian Policy since the 1880s* (Philadelphia: Temple University Press, 1984), p. 137.

<sup>107</sup> For Indian opposition to Collier's proposals, see Lawrence C. Kelly, 'The Indian Reorganization Act: The Dream and the Reality', *Historical Review* 44 (1975), pp. 296-7, 303-4; Rusco, 'Indian Reorganization Act', p. 53; John R. Wunder, *Retained By The People: A History of American Indians and the Bill of Rights* (New York: Oxford University Press, 1994), pp. 67-8.

<sup>108</sup> Barsh and Henderson, *The Road*, pp. 121-2, quoting Senate Report no. 1031, 78th Congress, 2nd Session (1944), p. 5.

<sup>109</sup> Quoted in Wunder, *Retained by the People*, p. 114.

<sup>110</sup> John Collier, *America's Colonial Record* (London: Victor Gollancz, 1947); Scudder Mekeel, 'An Appraisal of the Indian Reorganization Act', *American Anthropologist* 46 (1944), p. 209; Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920-1954* (Tucson, AZ: Arizona University Press, 1977), pp. 140-1; Wunder, *Retained by the People*, p. 71.

<sup>111</sup> Hauptman, 'Indian Reorganization Act', p. 142.

<sup>112</sup> Anita Vogt, 'Eligibility for Indian Employment Preference', *Indian Law Reporter* 1, 6 (1974), p. 33.

<sup>113</sup> Indian Reorganization (Wheeler-Howard) Act, s. 19.

<sup>114</sup> As Paul Spruhan has observed ('Legal History', p. 8), 'blood quantum existed before the extension of federal authority over tribal territory, and was not created specifically for it'. The blood quanta that continue to serve a variety of different purposes (e.g. determining eligibility for educational and health benefits) are not necessarily coterminous with those that govern the ownership of tribal land. See, e.g., Cohen, *Handbook*, pp. 2-5; Margo S. Brownell, 'Who is an Indian? Searching for an Answer to the Question at the Core of Federal Indian Law', *University of Michigan Journal of Law Reform* 34 (2000-2001), pp. 276-77.

<sup>115</sup> The BIA has repeatedly applied blood quantum requirements more zealously than other agencies and sometimes in excess of legislation. 'Current BIA policy [regarding employment preferences], then, appears to contradict S. 479 [of US Code Title 25, Indians] in two respects. It imposes the quarter degree blood requirement in all cases, whereas the statutory definition recognizes as an Indian any person of Indian descent who is a member of a Federally-recognized tribe. Secondly, it requires tribal membership in all cases, whereas the statute does not require membership of persons who have one-half or more Indian blood': Vogt, 'Indian Employment Preferences', p. 37. See also Brownell, 'Who Is an Indian?', pp. 289-92; Hagan, 'Problem of Indian Identity', p. 319.

<sup>116</sup> *Hearings on S. 2755 and S. 3645. Before the Senate Committee on Indian Affairs*, 73rd Congress, 2nd Session (1934), p. 264.

<sup>117</sup> See Wolfe, 'Land, Labor, and Difference', p. 887.

<sup>118</sup> 'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude' (US Constitution, 15th Amendment). To put the point in different terms, the issue comes down to whether or not the holding in *Morton v. Mancari* (417 US 535, 1974) – that Indian preferences were not based on race but were a political distinction ultimately flowing from treaties – would withstand survive close judicial scrutiny. See, e.g., Christine Meteer, 'The Trust Doctrine, Sovereignty, and Membership: Determining Who is Indian', *Rutgers Race & Law Review* 5 (2003), pp. 53-4, 64-5; Paul Spruhan, 'Indian as Race/Indian as

Wolfe, 'After the Frontier'.

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Political Status: Implementation of the Half-Blood Requirement Under the Indian Reorganization Act, 1934-1945', *Rutgers Race & The Law Review* 8 (2006), p. 28.