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## Americans versus Indians: The Northwest Ordinance, Territory Making, and Native Americans

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The Northwest Ordinance is celebrated as one of the great documents of American history because it envisaged an empire based upon principles novel at the time. By allowing what started in effect as colonies to achieve full statehood in the Union, the Confederation Congress in one of its last acts provided an innovative solution to the governance of the area north and west of the Ohio River. Through recapitulating the hypothetical history of the original states, new and yet-to-be-created territories were to gain eventually the rights and responsibilities of the original states.<sup>1</sup>

Through such a novel solution the Confederation Congress brought yet another American institution into the "new order of the ages," so proudly proclaimed on the Great Seal of the United States. Congressmen thus invented a new kind of colonial system to go with the other innovations in constitutions and law codes, forms of government, church-state relations, and even spelling books and social customs.<sup>2</sup> So successful was the change that to Ameri-

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<sup>1</sup> The most recent history of the evolution of the Ordinance is Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, 1987), chapters 1-3, but see also Jack E. Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784-1912* (Pittsburgh, 1968), chapter 1; Robert F. Berkhofer, Jr., "Jefferson, the Ordinance of 1784, and the Origins of the American Territorial System," *William and Mary Quarterly*, 3rd. ser., XXIX (April, 1972), 231-62, and Robert F. Berkhofer, Jr., "The Northwest Ordinance and the Principle of Territorial Evolution," in *The American Territorial System*, ed. John P. Bloom (Athens, Ohio, 1973), 45-55.

<sup>2</sup> The novelty of the United States as an experiment is one theme of many books and articles on republicanism in the revolutionary era; see, for example, Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, N.C., 1969), chapter 15. For European views of the newness of the United States, see Durand Echeverria, *Mirage in the West: A History of the French Image of American Society to 1815* (Princeton, N.J., 1957); Robert R. Palmer, *The Age of Democratic Revolution: The Challenge* (Princeton, N.J., 1959), chapter 9; Hugh Honour, *The New Golden*

cans then and forevermore the internal *colonies* of the United States became known as *territories*.

The newness of the United States posed problems concerning national identity, however, as leading Americans consciously created an ideology of Americanism to measure the loyalty of new citizens and to understand their own place in history. On one hand the new ideals and institutions were presumed universally good for all human beings and therefore the wave of the future. What the United States was in the last quarter of the eighteenth century, Europe and maybe the world would become in succeeding centuries. On the other hand America's new ideals and institutions—be they political, social, or religious—seemed unique to the new United States at the time. The fact that America's good fortune appeared an exception to the world's normal condition seemed to demand the special nurture of its ideals and institutions.

Under such impressions Americans then and subsequently were ambivalent about receiving foreign peoples into their society for fear they might contaminate, if not subvert, American life. Could alien "others" appreciate American ideals or contribute toward social arrangements in the United States if they had lived under laws and institutions presumed completely opposite? Concern about the effects of foreign peoples and their alien "otherness" on American values and institutions went hand in hand, therefore, with proclaiming the higher ideals of the American way of life as appropriate for the whole world.<sup>3</sup>

The paradox of Americanism as ideology and in practice lay in this contradiction between proclaiming American arrangements as good for all human beings but restricting their benevolence to a favored few peoples among the world's societies. Dominant Americans' efforts to bound their heterogeneous society excluded certain peoples as others and included themselves as true Americans on grounds composed equally of an ideology of ideal institutions and an ideology of peoplehood based upon ethnicity or race. As a result American leaders, intellectuals, and ordinary citizens defined Americanism by certain ideals or modes of organization deemed

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*Land: European Images of America from the Discoveries to the Present Time* (New York, 1975), chapter 6, which focuses on pictorial as well as verbal imagery of "The Land of Liberty." Cushing Strout, *The American Image of the Old World* (New York, 1963), chapters 1-3, covers the symbolic understanding of Europe by Americans in this period as a contrast to themselves.

<sup>3</sup> John Higham, *Send These to Me: Jews and Other Immigrants in Urban America* (New York, 1975). Higham's chapter 6, particularly, treats the larger nativist strain in American history. David B. Davis argues for the connection between Americanism and nativism in "Some Themes of Counter-Subversion: An Analysis of Anti-Masonic, Anti-Catholic, and Anti-Mormon Literature," *Mississippi Valley Historical Review*, XLVII (September, 1960), 205-24; and "Some Ideological Functions of Prejudice in Ante-Bellum America," *American Quarterly*, XV (Summer, 1963), 115-25.

particularly American, and the cause of that peculiar American-ness was all too often given an ethnic or racial basis.<sup>4</sup>

If the provision in the Northwest Ordinance for the eventual statehood of territories represented the new and universal side of American ideology, then the ethnic application of that principle in practice proves the other side of the paradox of Americanism.<sup>5</sup> And no better example exists of both the strengths and limits of the ideal of territory making in light of its ethnic implications than that of the American Indians. They are one of the two peoples mentioned specifically in the Ordinance, but their inclusion in the document and the history of later efforts to establish an all-Indian territory point to the ethnic premises by which "Americans" understood and bounded themselves in earlier centuries.<sup>6</sup>

No peoples were considered more alien to American ideals and institutions than those peoples whites collected under the term *Indian*.<sup>7</sup> Thus the American Indian as image and supposed reality has always been a challenge to the ideology of Americanism. For generations of United States politicians, missionaries, and intellec-

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<sup>4</sup> Because the United States was born in revolution and comprised polyglot peoples, the social construction of American nationality was quite conscious. See James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill, N.C., 1978); Hans Kohn, *American Nationalism: An Interpretive Essay* (New York, 1957); Paul Nagel, *One Nation Indivisible: The Union in American Thought, 1776–1861* (New York, 1964); Paul Nagel, *This Sacred Trust: American Nationality, 1798–1898* (New York, 1971); Benjamin T. Spencer, *The Quest for Nationality: An American Literary Campaign* (Syracuse, N.Y., 1957); Merle Curti, *The Roots of American Loyalty* (New York, 1946); Philip Gleason, "American Identity and Americanization," in *Harvard Encyclopedia of American Ethnic Groups*, ed. Stephan Thernstrom et al. (Cambridge, Mass., 1980), 31–58. On racism in general in American history see Thomas F. Gossett, *Race: The History of an Idea in America* (Dallas, 1963); Dwight W. Hoover, *The Red and the Black* (Chicago, 1976); Ronald Sanders, *Lost Tribes and Promised Lands: The Origins of American Racism* (Boston, 1978); Ronald Takaki, *Iron Cages: Race and Culture in Nineteenth-Century America* (New York, 1979); Frederick W. Turner III, *Beyond Geography: The Western Spirit Against the Wilderness* (New York, 1980). Werner Sollars provides new perspective on the notion of ethnicity as a way of understanding American peoplehood in *Beyond Ethnicity: Consent and Descent in American Culture* (New York, 1986).

<sup>5</sup> I do not mean to imply that delays in admission and statehood did not occur for such other reasons as political factionalism and party fighting, size of the territorial population and tax-paying requirements, and conflicts over the boundaries of new states.

<sup>6</sup> The other foreign people mentioned specifically in the Northwest Ordinance are the French inhabitants of the so-called Illinois Country who are exempted from the provision for partible inheritance of estates without wills, the standard authority on which is still Clarence W. Alvord, *The Illinois Country, 1673–1818* (Chicago, 1922). Jacqueline Peterson argues that these Illinois settlers were a métis population of French, black, and Indian peoples. Peterson, "Many Roads to Red River: Métis Genesis in the Great Lakes Region, 1680–1815," in *The New Peoples: Being and Becoming Métis in North America*, ed. Jacqueline Peterson and Jennifer S. H. Brown (Lincoln, Nebr., 1985), 35–72. The other people mentioned indirectly are Afro-Americans in the provision for exclusion of slavery in the Northwest Territory.

<sup>7</sup> As the reader will see, I usually use the term *Indian* to designate the white image of Native Americans as a single collective entity and to that extent alone a stereotype.

tuals, "American" and "Indian" represented opposite ways of living and behaving. For these white Americans the very concept of the Indian denied middle-class proprieties, private property, and proper governance. Whether attempting to understand Indian morals or economy, housing or government, family life or religion, most white Americans measured the First Americans as a general image against those values, customs, and institutions they most cherished in themselves. So alien was the Indian considered to the ideal American way of life that native Americans were long denied citizenship in the nation in which they were born.<sup>8</sup>

What Indians required in line with this imagery of their deficiency was drastic transformation to approved American ways through the example of the very institutions they presumably lacked: small private farms, formal churches and schools, and republican government. Through peaceful exhortation and model institutions preferably but by annuity and force if necessary, leading Americans tried to change Indian ways to conform to approved American ways of religion, economy, government, education, family, and manners. Indians to become proper Americans were supposed to give up tribal government, communal land ownership, and supposedly loose morals and marriage customs for bourgeois farming, Christian religion, elective government, and the middle-class family. Public policies and private philanthropy aimed to convert Indians into Americans by giving them what other Americans possessed according to the ideology of Americanism. The Indian would thus be eliminated in favor of the American, to paraphrase a slogan popular later among the self-designated (white) Friends of the Indian.<sup>9</sup>

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<sup>8</sup> In addition to the citations on racism in note 4 above, see also on the image of the Indian as alien "other": Robert F. Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York, 1978); Brian W. Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, Conn., 1982); Raymond W. Stedman, *Shadows of the Indian: Stereotypes in American Culture* (Norman, Okla., 1982); Robert F. Berkhofer, Jr., "White Conceptions of the Indian," forthcoming in *Handbook of North American Indians: Vol. 4, Indian-White Relations*, ed. Wilcomb Washburn, to be published by the Smithsonian Institution. Compare Ray Allen Billington, *Land of Savagery, Land of Promise: The European Image of the American Frontier in the Nineteenth Century* (New York, 1981). On images of the Indian following the Revolution see Bernard Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (Chapel Hill, N.C., 1973); and Robert E. Bieder, *Science Encounters the Indian, 1820-1880: The Early Years of American Ethnology* (Norman, Okla., 1986); Roy Harvey Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind* (2nd. ed., Baltimore, 1965), 76-104.

<sup>9</sup> Francis Paul Prucha provides a recent, comprehensive overview of federal policy toward the Indians from the viewpoint of its paternalism in *The Great Father: The United States Government and American Indians* (2 vols., Lincoln, Nebr., 1984). Robert F. Berkhofer, Jr., explores missionary efforts to transform tribal peoples as the quintessential model of Americanization before the Civil War in *Salvation and the Savage: An Analysis of Protestant Missions and American Indian Response, 1787-1862* (Lexington, Ky., 1965). For the later period see Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman, Okla., 1976).

At the same time many, maybe most, whites believed that the Indian was congenitally incapable of adopting civilized ways. A Senate Report in 1836 recapitulated briefly the "peculiarities of constitution" attributed by so many whites to the Indian (in order to refute them): "1st, An irresistible thirst for ardent spirits. 2d, An unnatural predilection for war. 3d, An inordinate fondness for the hunter state; and, 4th, An unconquerable aversion to the improvement of condition."<sup>10</sup> For those whites who believed these attributes innate to the Indian character, only the transfer of Indian lands to white hands, if not also the elimination of the Indian through death or assimilation, would solve the problem of the Indian and the Americanization of the West.

American goals of transforming the Indians into good Americans conflicted with the drive to people the United States with good white Americans. Whether conceived of as noble or savage, the Indian stood in the way of American progress according to the ideology of Americanism. The anomaly of the Indian was resolved all too often in favor of white interests and advance over native residence and civilizational transformation. In the competition for natural resources and lands, native lands were claimed and often expropriated for supposedly higher white uses in the name of private property. The goal of acculturation and assimilation was often superseded in favor of removal to the frontier and continued segregation. Even Christianity and civilization were conceived as leading to reduced Indian lands in native terms as well as a better Indian life in white terms. When the Cherokee, Choctaw, and other southern tribes adopted white ways of farming, government, and religion in the first three decades of the nineteenth century, they still found themselves forced to remove in the name of progress and Americanism during the fourth decade.<sup>11</sup>

No matter what whites did to the Indian peoples, whether judged today as bad or good, altruistic or crass, all was done in the name of bettering their existence according to the ideals of Americanism. White ideals therefore marched alongside material interests in the spread of the American empire of liberty. In the end white policy was geared to help the Indian only in terms of white conceptions of what the Indian needed. What the Indian needed was shaped by the long-standing image of the Indian as alien to the American way of life.

When read in its entirety, the very long sentence in the Northwest Ordinance about Indian relations promised nothing less—and

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<sup>10</sup> Senate Report no. 246, March 15, 1836, 24 Cong., 1 sess., 1835–1836 (serial set 281), 1.

<sup>11</sup> The most recent historian of the irony of Cherokee acculturation is William G. McLoughlin, *Cherokees and Missionaries, 1789–1839* (New Haven, Conn., 1984); and McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, N.J., 1986).

nothing more!—than what soon became official policy under the new federal government inaugurated by the Constitution:

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them; and for preserving peace and friendship with them.

Congress did not foreswear a policy of land acquisition or lawful war, only pledged that land transfers would rest upon tribal consent and that military actions would be justified under white rationales. Likewise, Congress promised to restrain those traders and other whites who cheated Indians or intruded upon their lands illegally because such actions led to costly wars between the United States and the Indian tribes. In the end, whites decided what Indians needed or could use.<sup>12</sup>

The novelty of this policy lay only in its repudiation of congressional efforts immediately after the Revolution to claim Indian lands first as reparations and then by conquest. Immediately following the Revolution congressional commissioners to the Indian nations demanded land cessions as recompense for the tribes' siding with the British against the new United States. After the failure of that policy, the Confederation Congress pursued military conquest to gain the same lands and quiet the Indian opposition. Since neither policy worked because of successful native resistance combined with English and Spanish interference, the new federal government under President George Washington and his secretary of war, Henry Knox, advocated a policy more in keeping with the notion of national honor, a depleted treasury, and the seemingly inevitable expansion of white settlement. National honor was to be preserved through the purchase of the lands occupied by Indian tribes who presumably would sell willingly, and cheaply, when whites wanted to buy.<sup>13</sup>

By making the expansion of white America contingent upon Indian assent and white restraint, the Confederation Congress and, later, the federal government predicated a delicate balance of con-

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<sup>12</sup> The provision that defined Indian relations in the Northwest Ordinance was re-adopted in effect by the new United States Congress under the Constitution when it adapted the Northwest Ordinance to the new federal government structure in 1789. *U.S. Statutes at Large*, I, 50-53.

<sup>13</sup> I have christened this policy "Expansion with Honor" in my *White Man's Indian*, pp. 145-53. The next few paragraphs follow closely the wording of some of my argument in that book. For more extended discussions of early United States policy, consult Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Cambridge, Mass., 1962); and Reginald Horsman, *Expansionism and American Indian Policy, 1783-1812* (East Lansing, Mich., 1967).

ditions that rarely obtained upon the frontier. First, the policy assumed at its foundation that Indians possessed more lands than they could or would use by accepted white standards and that therefore they would readily cede those lands to the government for small sums of money and gifts. The policy also presumed that settlers on the frontier could be restrained from occupying tribal lands even though they considered all Indian lands underutilized by white standards of resource usage. If the policy were to succeed as publicly espoused, then the same fate that decreed the increase of the white population on former Indian lands must also doom the Indians to disappearance through death or acculturation.

The policy rested, therefore, upon certain common white images of the Indians' ultimate fate and their lack of attachment to home turf. To most white Americans the Indian appeared doomed to extinction through disease as had been the case during earlier periods of contact. The Indian had always seemed to vanish before white advance and would presumably continue to disappear as white America expanded.<sup>14</sup> Moreover, whites assumed the remainder could and would continue to remove westward according to the standard imagery of native migratory habits. Westward migration like decimation from disease opened tribal lands to white occupation.

What disease and migration did not achieve, acculturation would finish under this view. Civilizational transformation of the Indian through acculturation would not only convert the "savage" to a bourgeois lifestyle but would also reduce the need for extensive tribal holdings because the land would be farmed American style. This supposedly more intensive use of the soil would release large areas of surplus tribal lands for white acquisition. White policy at its most philanthropic envisaged the exchange of white civilization for native resources and souls to the ultimate benefit of both whites and Indians according to white understanding. Until the Indians wanted to part with their lands, the federal government would prevent, by force if necessary, the illegal intrusion of greedy white settlers into the legally separate Indian country.

All in all, the basic policy of expansion with honor rested upon the assumption that the Indians need not cede lands faster than their changing status encouraged or required and that whites would not demand more land than the orderly advance of their frontier necessitated or stimulated them to require. The policy always presumed that cessions would be obtained before too much white expansion overwhelmed nearby tribes. Under this policy whatever was good for white Americans was also assumed desirable for In-

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<sup>14</sup> As its title suggests, Dippie's *The Vanishing American*, takes as its special theme the presumably doomed native.

dians, even if the tribes had to be manipulated against their own inclinations for the larger good of all as whites judged those higher ends.

Since white expansion was presumed not only unpreventable but as desirable as it was ultimately inevitable, policies for western lands and Indians contained a fundamental contradiction. In the end white policymakers like their frontier followers favored white progress through expansion of white settlement in the near future over the preservation of Indians on their native lands for the approbation of an abstract posterity. The Land Ordinance of 1785 and the Northwest Ordinance applied to areas that needed to be vacated of Indian title before the two acts could become effective in practice. The Land Ordinance, for example, presumed cession of tribal lands in the Old Northwest from the very beginning of surveys.<sup>15</sup> Likewise, the Northwest Ordinance could only operate in areas in which United States sovereignty had replaced tribal authority in actuality as well as in legal theory. The territorial system, in fact, by creating new states in the West only added in practice to the demands for faster Indian removal and land sales as the new representatives joined Congress. The fight between the East and the West over Indian policy was not over the replacement of Indians by Americans but over how soon and by what methods this was to be accomplished.

The anomaly built into the territorial system is conveyed well by the conflicting interests the territorial governor was to serve. As Indian superintendent of his territory he was to protect the Indians of his jurisdiction from white intrusion. As governor of the territory he was to aid whites in their endeavors to bring the area under cultivation and progress. As commander of the white-manned militia he was to order the enforcement of Indian regulations against local white inhabitants as well as the protection of his white constituents against resentful Indians.<sup>16</sup>

Some politicians, officials, and missionaries thought that the establishment of an exclusively Indian territory would eliminate or at least mitigate the contradictions between white expansion and Indian rights. Not until the Louisiana Purchase so dramatically increased the area of the United States did lands seem available for the creation of an all-Indian territory. The lands vacant of

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<sup>15</sup> For the evolution of the Land Ordinance, see, in addition to Onuf, *Statehood and Union*, chapter 2, Paul W. Gates, *History of Public Land Law Development* (Washington, D.C., 1968), 59-74; and William D. Pattison, *Beginnings of the American Rectangular Land Survey System, 1784-1800* (Chicago, 1957). For application of the ordinance see, besides Gates, Malcolm J. Rohrbough, *The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837* (New York, 1968).

<sup>16</sup> For an examination of the dilemmas of the governors as Indian superintendents, see Eblen, *First and Second United States Empires*, chapter 8.



white settlements in the northern half of the purchase presented an ideal opportunity in Jefferson's mind for exchanging tribal lands in the East for new areas in the West with a guaranteed title. This proposition was written into the act erecting the southern and more populated portion of the Louisiana Purchase into the Orleans Territory in 1804.<sup>17</sup>

Jefferson's idea of guaranteeing emigrant tribes title to their western lands was reintroduced by President James Monroe at the end of his second term as a way of inducing eastern tribes to remove westward. As part of this plan Monroe urged the establishment of a "system of internal government which shall protect their property from invasion, and, by a regular progress of improvement and civilization, prevent that degeneracy which has generally marked the transition from one to the other state."

The digest of such a government, with the consent of the Indians, which should be endowed with sufficient power to meet all the objects contemplated—to connect the several tribes together in a bond of amity and preserve order in each; to prevent intrusions on their property; to teach them by regular instruction the arts and civilized life and make them a civilized people—is an object of very high importance. It is the powerful consideration which we have to offer to these tribes as an inducement to relinquish the lands on which they now reside and to remove to those which are designated. It is not doubted that this arrangement will present considerations of sufficient force to surmount all their prejudices in favor of the soil of their nativity, no matter how strong they may be.<sup>18</sup>

For Secretary of War John C. Calhoun such a concession only made sense if the proposed system of governance "would gradually unite the several tribes under a simple but enlightened system of government, and laws formed on the principles of our own," and would prepare the tribes to join in the larger forms of American government "at no distant day."<sup>19</sup>

At the end of 1825 the House of Representatives resolved in favor of such an exchange and "a territorial Government over them of the same kind, and regulated by the same rules, that the Territories of the United States are now governed."<sup>20</sup> Following the suggestion of Secretary of War James Barbour,<sup>21</sup> the House Committee on Indian Affairs reported a bill "for the preservation and civiliza-

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<sup>17</sup> *U.S. Statutes at Large*, II, section 15, p. 289. Still useful on its topic is Annie H. Abel, "Proposals for an Indian State, 1778–1878," *Annual Report of the American Historical Association for the Year 1907* (2 vols., Washington, D.C., 1908), I, 87–104, but it should be supplemented for the earlier period by Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln, Nebr., 1975), chapters 5, 8.

<sup>18</sup> Special Message of James Monroe, January 27, 1824, in *A Compilation of the Messages and Papers of the Presidents: Vol. 2 [1817–1833]* (Washington, D.C., 1905), 281, 282.

<sup>19</sup> Quoted in Abel, "Proposals for an Indian State," 91 note g.

<sup>20</sup> U.S., *House Journal*, 19 Cong., 1 sess., 1824–1825 (serial set 130), 97.

<sup>21</sup> James Barbour to John Cocke, chairman of the House Committee on Indian Affairs, February 3, 1826, in *Congressional Debates*, 19 Cong., 1 sess., 1825–1826, Appendix, 41–42.

tion of the Indian Tribes within the United States" that included a vague provision for the establishment of a territorial government for the legally guaranteed permanent residence of the emigrant Indians. Section six provided for the president to appoint, when he judged circumstances warranted, a governor, secretary, and three judges. The legislative council and other officers were to be selected from the "said Indians, as the President may deem proper." The president was to prescribe the rules and regulations for the administration of such a government and define the duty of the officers.<sup>22</sup> The bill failed of passage.

Forceful removal of the eastern Indians under Andrew Jackson made both the creation of a territorial home for emigrant Indians and the governance of the emigrant tribes more pressing than under the previous scheme of voluntary migration. As part of an overall plan for the governance of the tribal relationships in the area to which the eastern tribes removed and the accompanying reorganization of the United States Indian Office, the House's Committee on Indian Affairs reported a bill to establish a "Western Territory" that would be guaranteed forever to the removed tribes. Each of the tribes would continue to manage their own internal affairs through their current form of tribal government, but a presidentially appointed governor, who acted also as superintendent of Indian affairs for the territory, should call together the chiefs to form a confederacy to which the Choctaws, Cherokees, and Creeks must consent. The annual general council should contain no fewer than twenty-four men elected by the tribes or selected from the chiefs. As soon as possible all the council members should be elected in line with the preferred American mode of representation. The governor possessed absolute power to veto legislation and to convene and adjourn the council. The confederated tribes could elect a delegate to Congress by a method prescribed by the council "in order to encourage the said tribes, and to promote their advancement in the arts of civilized life, and to afford to them a convincing proof of the desire of the United States that they may eventually be secured in all the blessings of free government, and admitted to a full participation of the privileges now enjoyed by the American people."<sup>23</sup> If the council was permitted to make laws for intertribal affairs, its Indian members, as with all arbitrary territorial governments, were strictly under the control of the federal government. What was proposed in other words was a modified second stage government adapted to what was considered the Five Civilized Tribes' stage of acculturated progress.

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<sup>22</sup> House Bill 113, February 21, 1826, 19 Cong., 1 sess., 1825-1826 (National Archives, Washington, D.C.).

<sup>23</sup> House Bill 490, May 20, 1834, 23 Cong., 1 sess., 1834-1835, *ibid.*

Opposition in Congress ranged from the arguments of John Quincy Adams, serving in the House after his presidency, about the unconstitutionality of stipulating specific forms of Indian governments in violation of treaties or of erecting an all-Indian state to those stressing the despotic power given the president to control the territory through his appointive powers or the specter that the precedent of a territory for Indians might raise demands for one for a "deeper colored race."<sup>24</sup> While the bills codifying the trade and intercourse acts and the reorganization of the Indian Department passed both houses of Congress and were signed into law, the Indian territorial bill twice failed of passage in the House of Representatives. Later, in both 1837 and 1839, the Senate passed an Indian territorial bill by a large majority, but each time it died in the House. Modifications demanded in the series of bills suggest some of the specific issues: the territory should be allowed only an agent in the capital, not a delegate to sit in Congress; the title of governor disappears in favor of superintendent of Indian affairs; the method of selection and the number of tribal council members varies; the official journal of proceedings must be kept in English; all laws passed by the council must be accepted by the president. Throughout the decade of the 1830s, however, all versions of the bills looked forward to the creation of a single consolidated political entity premised upon the supercession if not also the destruction of the tribal governments and the continual intervention of a paternalistic federal government.<sup>25</sup>

As with the establishment of other territories, the creation of an Indian one raised questions over the extension of slavery, sectional balance in Congress, and partisan opposition to executive control over the temporary government. Congressmen, however, wondered in this instance whether the United States should encourage the consolidation of Indian enemies or foster an Indian state. Still others questioned whether even the Five Civilized Tribes let alone other tribes could ever reach a stage of political progress in their own governments that warranted the equality conferred by full-fledged statehood in the Union. In the end racist fears of fostering continued Indian "otherness" by permitting an ethnically based territory won out over the American ideal of self-government for all peoples in the United States.<sup>26</sup>

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<sup>24</sup> See Satz, *American Indian Policy in the Jacksonian Era*, 142-43.

<sup>25</sup> House Bill 365, February 19, 1836, 24 Cong., 1 sess., 1835-1836; House Bill 901, February 1, 1837, 24 Cong., 2 sess., 1836-1837; House Bill 495, January 30, 1838, 25 Cong., 2 sess., 1837-1838; Senate Bill 159, March 4, 15, 1836, 24 Cong., 1 sess., 1835-1836; Senate Bill 15, December 12, 15, 22, 1836, 24 Cong., 2 sess., 1836-1837; Senate Bill 75, December 20, 28, 1837, 25 Cong., 2 sess., 1837-1838; Senate Bill 23, December 10, 1838, 25 Cong., 3 sess., 1838-1839. All bills can be found in the National Archives.

<sup>26</sup> The legislative history of these efforts to erect an Indian Territory before the Civil War may be followed in Abel, "Proposals for an Indian State"; Satz, *American Indian Policy in the Jacksonian Era*, chapters 5, 8; Prucha, *Great Father*, I, 302-309.

Of course, all the plans always aimed at creating an Indian government on the American model complete with elections and representation proportional to population as opposed to either traditional or acculturated Indian ways. The dilemma for officials, missionaries, and other whites supporting the creation of an Indian territory was always how to permit a tribe's control of its own affairs as so often guaranteed in the treaties of removal and yet direct the various tribes into a new intertribal consolidated confederacy and council. The ultimate goal of all the plans reduced to the idea advanced by the Baptist missionary Isaac McCoy, who so indefatigably throughout the 1830s lobbied for such a territory and who hoped to preside over any Indian territory created. Following McCoy's ideas, Thomas L. McKenney believed that the Indians should "be placed under a Government, of which they shall form part, and in a Colonial relation to the United States . . . . In a Colony of course, the existing divisions among the Tribes would be superseded by a General Gov't for the whole . . . ." <sup>27</sup> Surely such colonization through confederation sought a cheaper and more efficient mode of controlling the tribes, as the government Indian agents in the field told their charges, but it also hoped to destroy tribal institutions and solidarity in favor of American ways.

The Cherokee, Choctaw, and Creek of the so-called Civilized Tribes opposed all these efforts to consolidate their governance and to supercede their own acculturated forms of government through some political entity not controlled by themselves as violating the long-term treaty obligations of the United States. After all, their members had adopted in the 1820s white models of government complete with constitutions and law codes, two-house legislatures, chief executives, courts and judges, and the other trappings of the American way of governance at the behest of the federal government and missionaries, and still the southern states demanded their removal. The Georgia authorities even used the Cherokees' new republican form of government to justify their removal on the grounds that under the federal Constitution a new state could not be formed within the boundaries of an older one without its consent. Thus a temporary government for an all-Indian territory might once again seem to threaten an *imperium in imperio* in the opinion of some congressmen.

The idea of an Indian territory based on customary American principles violated the Indians' right to their own form of acculturated self-government as they had adapted to American institu-

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<sup>27</sup> Thomas L. McKenney to Peter B. Porter, January 31, 1829, quoted in Abel, "Proposals for an Indian State," 93-94 note g. For McCoy's lobbying and views see George A. Schultz, *An Indian Canaan: Isaac McCoy and the Vision of an Indian State* (Norman, Okla., 1972); and Robert F. Berkhofer, Jr., Introduction to Isaac McCoy, *History of Baptist Indian Missions* (1840; reprint, New York, 1970), v-xxvii.

tions. As a result the Five Civilized Tribes long opposed any attempts to erect an Indian territory according to the usual territorial model of arbitrary government as destructive of their own forms of government and the supposed sovereignty they possessed. To them it smacked of the customary paternalism and efforts to erode Indian rights if not to steal their lands as well through allotment in severalty, which was so often part of the package. That other tribes were to gain equal or even proportional representation in the territorial council with the Civilized Tribes only further convinced the latter of the nefarious purposes of the territorial scheme.

What the federal government was not able to achieve in consolidation of the Five Civilized Tribes on their new lands and the imposition of a unified intertribal government before the Civil War, it tried again after the ostensible defeat of the those tribes as allies of the Confederacy. The peace treaties generally specified participation in an elected general council of the Indian tribes presided over by a governor or superintendent of Indian affairs and the establishment of United States courts and marshals as well as land cessions for other tribes still to be removed, emancipation of Indian-owned slaves, and railroad rights of way across remaining tribal lands.<sup>28</sup> For the following two decades numerous bills were presented for the formation of a government for the tribes in the Indian territory, but none was enacted into law.<sup>29</sup> Most of the bills provided for a system of government modified and elaborated from the second stage as defined in the Northwest Ordinance with a two-house legislature with members usually elected proportionally to tribal populations; a presidentially appointed governor (with veto), attorneys and marshals, judges of supreme and district courts; and a delegate to the House of Representatives elected by the council or the voters. Often these officers were required to take an oath of loyalty to the United States and its laws. Sometimes the bills specified that the legislators and others be of Indian descent, and one bill proposed creating a territorial government staffed and elected by American citizens of African descent. Many of the bills establishing territorial government also provided for allotment in severalty and sales of the residual lands.

No wonder tribal representatives strenuously opposed efforts at establishing territorial government as unwarranted if not illegal intervention in tribal management of their own affairs, and

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<sup>28</sup> Senate Report 131, April 27, 1870, 41 Cong., 2 sess., 1869–1870 (serial set 1409), 4; Annie H. Abel, *The American Indian Under Reconstruction* (Cleveland, Ohio, 1925); Minnie Thomas Bailey, *Reconstruction in Indian Territory: A Study of Avarice, Discrimination, and Opportunism* (Port Washington, N.Y., 1972); Prucha, *Great Father*, chapter 16.

<sup>29</sup> The standard authority on this topic is Roy Gittinger, *The Formation of the State of Oklahoma, 1803–1906* (Norman, Okla., 1939). On pages 267–70 Gittinger provides a list of the bills through 1878 but mentions later ones in the text.

they linked railroad charters, allotment in severalty, and the proposed territorial government with the continued loss of lands. They had agreed in the post-Civil War peace treaties to the annual council, they argued, only in order to forestall further federal intervention in the form of a single and alien form of territorial government. They held specifically that their territory "was exclusively an Indian country, as contradistinguished from a Territory of the United States . . ." and guaranteed by treaty never to be subordinated to a territory or state government.<sup>30</sup>

Congress had always claimed, however, the sole right, even over the president of the United States let alone the actual inhabitants of a place, to set the conditions for the erection of a territory and the nature of its temporary government. As one Senate Report reminded the tribal opposition in brusque language:

While it is true that Congress should listen with patience and interest to suggestions from this source [Indians], it should be constantly kept in mind that it is Congress who is to prescribe a government for this Territory, and not the Indians who are to prescribe to Congress how it shall be governed. The Congress of the United States is not accustomed to ask the people who inhabit one of its Territories to determine for it the form of government to be established. If this is not done with intelligent American citizens, we are not disposed to depart from the rule in favor of those whose political experience would necessarily entitle their advice to less consideration.<sup>31</sup>

Blunt as the statement was, it merely applied longtime precedent in general territory making to the Indians.

Once again it was a clash of sovereignty, and in the long run the Five Civilized Tribes lost in favor of American-defined progress. Congressmen seemed to believe, as one Senate Report of 1870 argued, that the Fifteenth Amendment obligated Indian assimilation:

It is in consonance with the new policy of the government, born of the war and matured by the fifteenth amendment, that no alien race shall exist upon our soil; all shall be citizens irrespective of race, color, or previous condition of servitude. It is part of the inexorable logic of the times that the Indian must adapt himself to the rights and duties of citizenship. He must wield the franchise and fulfill the obligations imposed thereby, otherwise he will gradually disappear as the waste soil becomes more and more absorbed by the increasing necessities of agriculture.<sup>32</sup>

Another Senate committee in the same year, however, denied that the Fourteenth Amendment gave citizenship to Indians still sub-

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<sup>30</sup> Memorial to President Ulysses S. Grant, February 9, 1874, quoted in Abel, "Proposals for an Indian State," 101.

<sup>31</sup> Senate Report 336, February 1, 1871, 41 Cong., 3 sess., 1870-1871 (serial set 1443), 3. Congress halted what many considered the fiction of treaty making with Indian tribes in 1871. This report stated that tribes were domestic dependent nations and anomalies in the national system. In the end the report declared Indians wards of the United States and subject to the will of the federal government.

<sup>32</sup> Senate Report 131, April 27, 1870, 41 Cong., 2 sess., 1869-1870 (serial set 1409), 4.

ject to tribal jurisdictions, and a court subsequently sustained this opinion.<sup>33</sup>

With the economic development of the states around the Indian Territory, white demands for lands and resources of the native inhabitants of the territory increased in Congress as well as in tribal councils. The policy of allotment in severalty offered in the eyes of the self-denominated Friends of the Indians opportunities for the final Americanization of the Indians through their detribalization. Forced settlement upon small farms patented to their owners eventually would destroy the communal foundations of tribal society in favor of American individualism. Other white but crasser citizens saw only the surplus lands being sold to good capitalists of their own kind.

The devastating General Allotment Act of 1886, which forced the breakup of tribal lands into individually owned homesteads according to the American way of property holding, excluded the Five Civilized Tribes from its provisions because of their adamant opposition. After 1889, however, the lands of other tribes in the western half of the Indian Territory rapidly opened to white settlement in the famous series of land rushes. Congress established the territory of Oklahoma with a second-stage government to embrace these areas as they opened to white settlement, once again demonstrating the relationship between ethnicity and territory making.<sup>34</sup>

Although the Five Civilized Tribes sought to organize the Indian Territory as a separate state with the continuation of their own tribal governments and land tenure customs, Congress had other plans. Those tribes' lands were brought under special allotment in the early years of the twentieth century; thus, the tribes and their land patterns were prepared eventually to enter the union as Americanized people. When the land basis of the tribal societies was dispersed as homesteads, the legal basis for the tribal governments was considered dissolved in the view of official United States policy. As a consequence of these actions Congress in 1901 declared all the Indians of the Indian Territory American citizens.

Should Oklahoma Territory and the Indian Territory be admitted as one or two states? Whites in the two territories favored both sides of the question because of the different government and legal system in the officially organized Oklahoma Territory as opposed to the unorganized Indian Territory. The Civilized Tribes favored separate admission, once convening a constitutional

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<sup>33</sup> Berkhofer, *White Man's Indian*, 176-77.

<sup>34</sup> In addition to Gittinger, *Formation of the State of Oklahoma*, chapters 7-11, see Prucha, *American Indian Policy in Crisis*, especially chapters 8, 13. Prucha's entire book treats the larger context of federal Indian policy as an exercise in Americanization.

convention in 1902 and drafting a constitution for a state to be named Sequoyah. After a fact-finding expedition to the Southwest in late 1902, Indiana Senator Albert J. Beveridge, chairman of the Senate Committee on Territories, favored the admission of the two territories as a unified Oklahoma because of the large "energetic" (white) American population that predominated even in the Indian territory.<sup>35</sup> When tribal authority and institutions disappeared in 1906 in the area traditionally governed by the Five Civilized Tribes, Congress was persuaded finally to pass an act enabling a constitutional convention to draw up a constitution for the unified state of Oklahoma. Oklahoma was admitted as a single, preponderantly white state in 1907. About a third of its new citizens were Indian, and its new state constitution, by requirement of Congress, forbade the sale of alcohol to them.

Did Congress ever intend the Indian Territory to become an Indian state equal to other states in the Union? Congress never created a government for the territory when Indians predominated and never permitted a delegate to Congress from those tribes that were allowed one by treaty. Clearly tribal Indian and American citizen were considered opposing roles. Only through allotment and detribalization were Indians made citizens and permitted to become part of an American state. To the extent that Congress considered establishing an Indian territorial government, it was usually a device for acculturation and assimilation of aboriginal inhabitants according to the ideals of Americanism.

Congressional efforts to create an ethnically Indian territory revealed the fundamental contradiction between the ideology of Americanism as a set of supposedly universal ideals and their ethnic biases as applied to the Indian. That Congress considered so many bills establishing an ethnic Indian territory and that the Senate even passed two of them speaks to the ideal of incorporating Indians into United States society as self-governing peoples on the model of other territories. That no one bill ever passed both houses speaks to the ethnic prejudices of Americanism vis-à-vis the Indian. Partisan opposition and sectional balance played their role in the failure of these bills to become laws, but the debates over the nature of the proposed governments as well as the actual administration employed provide evidence of the usual ambiva-

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<sup>35</sup> In 1902 the Majority Report of the Senate Committee on Territories outlined the criteria for granting statehood: "The advancement of the people, their state of life, their familiarity and sympathy with our institutions, their educational condition, and all the elements that go to make up good citizenship are to be equally considered." Thus the report devotes much space to languages spoken and read, literacy in English, educational institutions, economic progress, and numbers of population by ethnicity. Senate Committee on Territories, Majority Report, "New Statehood Bill," Senate Report 2206, part 1, December 10, 1902, 57 Cong., 2 sess., 1902-1903 (serial set 4410), 5.



lence of Americans in incorporating those they considered Un-Americans into their society. The lesson of this Indian territorial history would seem to be that the erection of a new territory, like the admission of a new state, depended upon the prevalence of an ethnically acceptable—that is, “American”—population as well as the predominance of the same kind of Americans in running the government.

Alaskan history under American jurisdiction offers further proof of this hypothesis for Indian peoples. Article three of the treaty of purchase exempted the “uncivilized native tribes” from its provision for granting the residents of Alaska the rights, advantages, and immunities of United States citizens.<sup>36</sup> Congress at first classified Alaska with its overwhelmingly native population of Indians, Eskimos, and Aleuts as part of Indian country according to the Indian Intercourse Act of June 30, 1834. The United States Army, Customs, and Navy administered in succession the new land for fourteen years after cession, in so far as it could be said to be governed at all, before Congress designated Alaska in 1884 not even a territory but a “civil and judicial district.” This novel government resembled a highly arbitrary first stage of territorial government under the rule of a governor, district judge, clerk of court, marshal and four deputy marshals, and four commissioners who acted like justices of the peace. With the administration of Alaska under far greater federal control than was usual in early territorial government at the time, Congress refused to extend the Constitution to Alaskans and prohibited, as in other areas defined as Indian country, the importation of liquor.<sup>37</sup>

The influx of American population after the Klondike strike renewed petitions to Congress for self-government through territorial status, but congressmen still thought the white miners too migratory and the natives too unprepared for the responsibilities of American-style government. By the early twentieth century the whole issue of Alaskan governance had become entwined with conservation, partisan politics, and exploitation of the natural re-

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<sup>36</sup> Article 3, Treaty with Russia, June 20, 1867, *U.S. Statutes at Large*, XIV, 539. Article 3 reads in part: “They, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all rights, advantages, and immunities of citizens of the United States, and shall be protected in the free enjoyment of their liberty, property and religion.” For an exposition of this article see David H. Miller, *The Alaska Treaty* (Kingston, Ontario, 1981), 206-14.

<sup>37</sup> An overview of the pertinent history of Alaska as a territory can be found in Whitney T. Perkins, *Denial of Empire: The United States and Its Dependencies* (Leyden, 1962), chapter 2; and in relevant chapters of Ernest Gruening, *The State of Alaska* (2nd ed., New York, 1968). Claus-M. Naske offers an interpretive overview in *A History of Alaska Statehood* (Lanham, Md., 1985). For the earlier period see Jeanette Paddock Nichols, *Alaska: A History of its Administration, Exploitation, and Industrial Development during Its First Half Century under the Rule of the United States* (Cleveland, 1924); and Ted C. Hinckley, *The Americanization of Alaska, 1867-1897* (Palo Alto, Calif., 1972).

sources of America's northern outpost. Some congressmen looked to reducing Alaska to commonwealth or some other status to keep these Un-Americans out of the Union along with the Spanish inhabitants of the new empire acquired at the end of the Spanish-American War.<sup>38</sup> Congress, however, authorized a territorial delegate in 1906 and organized finally a proper territorial government with elective legislature in 1912, when congressmen also admitted into the Union the last two territories in the continental contiguous United States. Unlike other territories in the past, however, almost all the land of Alaska remained not only under the control of the federal government but under its ownership legally, which was the usual case of lands claimed and occupied by Indians but under United States sovereignty and trusteeship.

Although World War II, the Korean conflict, and superpower geopolitical considerations brought military and other white American population to Alaska after 1940, many of the old congressional complaints about the nature of the population, the harsh climate, and the lack of indigenous free enterprise combined with the federal ownership of 99 percent of the land, all abetted by partisan politics, stalled statehood. Only in 1958 did Alaska finally become the forty-ninth state. Sparse as the population appeared to the eyes of many congressmen, "Americans" outnumbered the natives by six to one in accord with the history of previous territories. By that time, however, the native population had elected Indian and Eskimo members of the territorial legislature.

A drama traditional in nineteenth century history is being replayed in modern Alaska: who will develop and benefit from the natural resources? Will the new drama created by the Alaska Native Claims Settlement Act and its supplements lead to a different ending than those played in the previous century? Only the future conclusion of this drama will prove whether the relationships traditional between territory making and Indian peoples' lives and resources has at last found a new ending.<sup>39</sup>

Expansion with honor as a policy for United States Indian relations was bound to fail not only because of the impossibility of maintaining the delicate balance between tribal and white interests presumed at its base but also because American ethnocentrism only permitted solutions to the "Indian problem" on terms limited by white ideals. Such ethnic onesidedness shaped first the seemingly generous policy enunciated in the third article of the North-

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<sup>38</sup> Walter L. Williams argues the connection between federal Indian policy and the administration of the new empire in "United States Indian Policy and the Debate Over Philippine Annexation: Implications for the Origins of American Imperialism," *Journal of American History*, LXVI (March, 1980), 810-31.

<sup>39</sup> For some idea of the conflict see the appropriate parts of the proceedings of the Alaska Native Review Commission (1984).

west Ordinance and then the efforts at erecting an Indian territory modeled on its provisions. In the end the territorial system presumed governments elected and run by white Americans, for those dominant in the United States denied as an ideal and refused to recognize in practice the plural society the nation was. As a consequence, Indian peoples were long refused citizenship in the nation of their birth and treated as problems to be solved rather than as cultures to be accepted. The ideological basis of Americanism demanded that all other peoples adopt American ideals in order to be fully accepted in the national society, but the ethnic bias of Americans if not Americanism itself classified certain peoples as "others" too un-American to be assimilated.

No peoples proved the paradox inherent in Americanism more than those collectively designated *Indian* by the white populace. That American colonies were known as territories further concealed the nature of the native peoples' plight as the result of an ambivalent, but imperial, Americanism. Americanism in its best interpretation—as a code of high ideals—blinded most politicians, intellectuals, and other citizens to the continued efforts of native peoples to maintain separate societies and cultures. The American territorial system provided and demanded but one kind of governmental model for all peoples. If America was plural in ethnicity and Americanism was ambivalent in ideal, the history of Indian relations in general and the history of Indian territory making in specific shows that the motto of *e pluribus unum* applied both to ethnicity and government in the American way of doing things for (and to) Indians.