



2020

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Recommended Citation

Casey, Jack P. (2020) “You Have Your Laws and Customs, So Have We”: White Property Rights in Legal Definitions of Native Identity and Tribal Disenrollment,” *The Macksey Journal*: Vol. 1 , Article 32.

Available at: <https://www.mackseyjournal.org/publications/vol1/iss1/32>

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Cover Page Footnote

I would like to thank Chris Finley for her crucial guidance and support in developing the paper, Alisa Catalina Sánchez for her patient help in guiding revisions, and Deanna Rivera for generously contributing her federal Indian law expertise.

“You Have Your Laws and Customs, So Have We”: White Property Rights in Legal Definitions of Native Identity and Tribal Disenrollment

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Abstract

At the root of U.S. policies towards Native peoples were, and are, conceptions of "blood" that aim to buttress whiteness and its depropertization of Native peoples. Through the construction of indigeneity as "almost white," U.S. settler colonialism has inscribed and protected white property rights over Native land. Thus, U.S. law has been at the forefront of colonialism's relentless expropriation of Native land and its accompanying protection of whiteness. From the Naturalization Act of 1790 to blood quantum in the Indian Reorganization Act and tribal citizenship requirements today, U.S. policies for Native peoples' citizenship and identity have been based in the racial fiction of "blood" and its problematic hyperdescent rule that erases indigeneity. By tying whiteness to property rights in land, U.S. law has positioned indigeneity simultaneously in opposition and approximate to whiteness. A modern continuation of these historical legacies, disenrollment removes members from tribal citizenship, a decision of each sovereign Native nation, but continues to construct indigeneity in the fiction of blood and ascribes it racial and political meaning. For instance, tribal membership criteria, or fundamental kinship and clan ties, are associated with legally prescribed racial classifications. I argue that these practices function as part of the protection of white property rights by deracializing indigeneity in order to erase Native peoples and racialize indigeneity so as to distance Native peoples from achieving rights equitable to whites.

Keywords: Native identity, citizenship, race, disenrollment, whiteness

The Inextricable Links Between Race and Politics in the U.S.

Race and politics in the United States are inextricably bound to one another as notions of phenotypic, cultural, and social differences were transposed into a hierarchical ordering of privileges. One of these political realms in which race has predominated, is citizenship and U.S. legal actions to parcel out who would receive full political privileges. In these discourses on racial identity and political privileges, the issue of “blood” is bound to arise as statutes like “blood quantum” and the “one drop rule” have been debated since the foundation of the United States. Yet, what most people fail to recognize is how these legacies of “racially contingent forms of property and property rights” emerged from slavery and conquest (Harris 1709, 1730). As Cheryl Harris brilliantly posited in “Whiteness as Property,” the intangible identity of whiteness became the basis of “racialized privilege” and an “object” reified in the law that allocates private and public societal benefits such as all of a person’s legal rights and the right to exclude, among many others (1709).

Through dissecting the legal history of the basis of whiteness and property rights from the beginning of U.S. legislation to contemporary debates about affirmative action, Harris lays substantial groundwork for how Anglo-American settler colonial law imposed its customs to racially subordinate Native peoples in order to seize and appropriate Native land. Her argument beautifully illustrates how white occupation and possession of Native land was validated “as the basis for property rights” and closely coincided with the racial subordination of Black people through slavery (1716). However, I believe that there is a need to trace the legacy of the inscription of whiteness and property rights in conceptions of Native “blood” and race from legislation like

the Dawes Act of 1887 to its current expression as tribal disenrollment. I aim to deconstruct and explicate the colonizing processes at work in U.S. legal practices by closely analyzing the symbolic language of "blood" that has historically articulated tribal enrollment (citizenship) (Tallbear 4). I contend that the federal imposition of blood quantum conceptions of race and as a result, Native nations' continued reliance on them to define tribal membership perpetuates the settler colonial legacy of inscribing white property rights on Native land.¹ Thus, disenrollment can be considered a modern continuation of these assimilation practices to "disappear" Native peoples and their sacred stewardship of land. By construing Native identity as race and constructing it out of American racial concepts, it diminishes Native peoples' political, religious, and social claims as homogeneously racial.

Legal questions of inclusion brought up by queries of Native citizenship since the foundation of the U.S. have given form to the boundaries and notions of Native identity. Disentangling the convolutions of federal Indian law that serve the interests of the settler colonial power, the United States, reveals the lineage of whiteness as property throughout U.S. legal history. For instance, the 1823 *Johnson v. M'Intosh* decision subordinated "Indian title" to that of the federal government which left indigenous property rights nonexistent and justified "discovery's" removal of Native claim to the land (beside the right of occupancy) that validated white land possession and rights (Harris 1716, 1721). In these legal arenas, Native peoples were confined to exercising sovereignty and self-determination either by working within the U.S. legal system as litigants in order to obtain rights or by opposing the legal system entirely. This is due largely to the fact that sovereignty as a legal framework was introduced by conquest in order to

¹ Native nations' continued reliance on blood quantum is due primarily to the Indian Reorganization Act of 1934 and its requirement for Native nations to structure tribal government in such a way to emulate U.S. government in order to receive federal recognition.

create the guise of legality for the theft of Native land (1727). Problematically, in order to exercise these rights one must satisfy the U.S. definition of indigeneity that excludes and erases Native peoples from tribal enrollment. In the eyes of the U.S. settler colonial state, blood quantum purportedly clarified who was Native and who was not, yet concomitantly racialized the property relationship of Native peoples and the land through a blood requirement (Million 104).

In other words, U.S. law severely limited the definition of indigeneity so as to exercise authority over every aspect of the ownership, sale, and transfer of Native land. *Mashpee Tribe v. Town of Mashpee* exemplifies this as it considered whether or not the Mashpee people legally constituted a “tribe” at the time of land cessions between Mashpee members and non-Natives (Harris 1764). In order to recoup their land, the Mashpee had to be considered a “tribe” in the eyes of the federal government to invalidate the land cessions (1764). The U.S. District Court found in 1978 that they did not satisfy their requirements of a “tribe” because of their intermingling with Europeans, runaway slaves, and other Native peoples that “muddled” their group identity (1764). By ruling that the Mashpee no longer had a distinct enough identity to constitute a tribe, the court illustrated the issue of seeking recognition from the federal government and related questions of the pitfalls posed by the legal archive.

In U.S. legal culture, a damage-based framework necessitates injury in order to provide legal remedy that risks reinscribing notions of groups as solely oppressed and not multifaceted (Tuck 413). Thus, legal cases must be taken with a grain of salt and a certain degree of speculation into the silences of the legal archive. This is attributable to the U.S. legal system’s knowledge recognition that demands a certain form of oral testimony predicated on the norms of Western narrative structure. It makes it difficult for indigenous forms of knowing or recounting histories to be deemed permissible in a court of law. Still, these challenges that the legal archive present are

not irrevocable, but equally valuable, as silences in the archive are indicative of the nature and reception of the history itself (Farge 98).

This is not a simple repetition of archival content, but a reflection of the incompleteness and obscurity of the legal archive for Native peoples that speaks to the uneven power in the production of sources, archives, and narratives (Farge 98) (Trouillot 27). Alice Piper, a young Paiute (Nuwuvi) girl, and her petition within the California Supreme Court in order to integrate into a white school in the Big Pine School District of Inyo County raises these questions as they relate to whiteness as property and disenrollment. Cited as a precedent of integration for *Brown v. Board of Education* in 1954, *Piper v. Big Pine* elucidates how indigeneity and whiteness were viewed by the court in the early twentieth century and how Native people operated within settler colonial legal spaces.

Performing Whiteness: *Alice Piper and Davis et al.* In the U.S. Legal System

Alice's 1923 writ of mandamus to compel the Big Pine School District of Inyo County in California to admit her to a white school following her exclusion from attending "because of blood differences alone," depicts how important white behaviors were in performing a valid claim to white property rights (*Piper v. Big Pine* 666). *Piper v. Big Pine School District of Inyo County* debated the controversies of race- and ethnic-based school segregation and federal policies for Native American education. In the preliminary review of the California Supreme Court in 1924, Justice Seawell wrote that since Alice and her parents Pike and Annie Piper had never lived in tribal relations, acknowledged allegiance or fealty to any "tribe or 'nation' of Indians," lived upon a "government Indian reservation," or been wards or dependents of the nation, that they were U.S. and state citizens (*Piper* 666).

Alice's habits, character, health, and desire to obtain an education were imperative to her positive and white portrayal to the court and their perception of her as "civilized" enough to attend a school with white children (666). Yet, none of her testimony or record of testimony appears in the court decision, which prompts two related queries of why her testimony would not appear. The first is that U.S. courts do not make it a priority to recognize or prioritize Native voices and ways of knowing. Second, Alice's silence could also be seen as an "ethnographic refusal," as Audra Simpson put forth in *Mohawk Interruptus*, to the requirements of the state court (97). Still, even if Alice did appear in the court decision it would not truly express or represent her opinions since she had to comply with judicial expectations of a "civilized Indian" to be admitted. Notwithstanding these issues, *Piper* was central to ending school segregation in California that *Ward v. Flood* (1874) and *Plessy v. Ferguson* (1896) had previously upheld.²

The court decision permitted Alice to attend a white school by issuing the writ of mandamus due to the General (Dawes) Allotment Act of 1887 (*Piper* 671). Section 5 mandated that maintaining a separate residence from tribal Indians and taking up civilized habits entitled Native Americans to the rights, privileges, and immunities of citizenship (General Allotment Act, Section 5). By not living on an Indian reservation or in tribal relations, one was considered white enough to be entitled to what white citizens enjoyed. Compounding this was the absence of a federal Indian school³ within three miles of the local white school, that brought Alice and six other Native students into litigation. Although this might not portray the social reality of how Alice actually integrated, it reflects the legal rationale underpinning white property rights and the

² For more information on *Piper v. Big Pine* and its historical legacy, read Nicole Blalock-Moore's "Alice Piper v. Big Pine School District of Inyo County: Indigenous Schooling and Resistance in the Early Twentieth Century," *Southern California Quarterly* Vol. 94 No. 3 (2012).

³ *Piper* offers a distinct view on Native education since it differs from the long and horrifying history of federal Indian boarding schools that Brenda J. Child's *Boarding School Seasons: American Indian Families, 1900-1940* (Lincoln: University of Nebraska Press, 2000) documents.

assimilation of Native peoples into citizenship. U.S. law legitimated white property rights and contrasted Native land claims with white conceptions of property in order to bolster their colonial claim of land ownership. As *Piper* demonstrated, race and performance of its associated behaviors to obtain citizenship was and continues to be at the nexus of these assimilationist policies.

In U.S. law, specifically the Naturalization Act of 1790, citizenship was originally articulated as land ownership and whiteness. When Native peoples were forced to become individual landowners through the Dawes Allotment Act of 1887, there was an explicit tie made between "blood" and property owning, thus making the fictitious concept of race necessary for land ownership. To own property, one had to have enough "Indian blood" to be considered Native in the eyes of the agent of the state and also adopt satisfactory "white" behaviors. In the process, it did not recognize Afro-Native people and confined indigeneity to a racialized "look" while seeking recognition from the settler colonial government in order to lay claim to Native land through the American legal system.

Whiteness in these statutes was defined as "civility," or race as performance of white settler customs and lifestyles, which destroyed Native cultural customs and made them "white" in the eyes of the law, even if they were not viewed as such by other whites. This legacy persists today with blood quantum requirements for membership in Native nations that replicate the racialization and deracialization of Native peoples by either defining them as "Indian" when they meet the specified blood requirement and labeling them "white" if they do not. In this "logic of possession through whiteness," racialization and deracialization act as two prongs of a colonial tool to exclude Native peoples from whiteness and property ownership (Arvin 20). María Josefina Saldaña-Portillo offers some clarity to this paradox in that these definitions of indigeneity "are constantly

shifting along the dual axis of fidelity and infidelity”⁴ so as to continue the colonial project (53). Its goal is to uphold whiteness’ ability “to buy and hold property” and indigeneity’s capability “to hold and relinquish land” when it erases indigeneity if it fails to satisfy federal requirements (Saldaña-Portillo 59). This principle holds even when the court reaches the opposite decision of *Piper* and labels indigeneity as incommensurable with white citizenship.

In 1908, *Davis et al. v. Sitka School Board* adjudicated the “civility” and ancestry of six Alaska Native children, Dora and Tillie Davis, John and Lottie Littlefield, Lizzie Allard, and Peter Allard. Once again petitioning to be admitted into a white school, the court ruled that the children’s habits of civilization were insufficient to meet the requirements of their judicial test (*Davis v. Sitka School Board* 494). District Judge Gunninson observed that “those who from choice make their homes among an uncivilized and semicivilized people and find there their sole social enjoyments and personal associations cannot, in my opinion, be classed with those who live a civilized life” (*Davis* 494). Emerging from nascent statehood, *Davis* was one of numerous cases to lay a legal foundation for how Alaska Natives and white settlers would interact under U.S. jurisdiction. Alaska Natives were required to emulate white, Anglo-American modes of behavior and conceptions of property in order to be considered citizens so as to obtain the public privilege of education. Thus, whiteness and property rights were counterposed to indigeneity, Native behaviors, and traditional conceptions of property. Not only did white property rights signify the physical ownership of the land, but they also denoted associated behaviors that endorsed and legitimized the public and private privileges of whiteness.

“Whiteness as Property” and “Possessions of Whiteness”: Explicating Settler Colonial Logics

⁴ In *Piper v. Big Pine*, language strikingly similar to “fidelity” was used to justify Alice’s “civility” and thus whiteness that entitled her to integrate a white school. Thus, the dichotomy of “fidelity” and “infidelity” bears resemblance to the language surrounding the racialization and deracialization of indigeneity.

With a detailed discussion of Harris' landmark article, the nuances of "whiteness as property" as a settler colonial logic become apparent, especially as they relate to Maile Arvin's "logic of possession through whiteness." Among the legal mechanics of the "property functions of whiteness," are the rights of disposition, right of use and enjoyment, reputation and status property, and the absolute right to exclude (Harris 1731). Although each of these are vital to the construction of "whiteness as property" as a legal edifice, the absolute right to exclude presides as an important logic in parceling out who is entitled to the public and private privileges of whiteness. First, the rights of disposition are pertinent to understanding this since in legal history, property has been considered something alienable, or separable, from the person who possesses legal claim to it (1733). Yet Harris elucidates the legal precedent that property in its many forms is not always alienable and illustrates that it is not farfetched for whiteness, an inalienable right, to be considered legal property that the law has buttressed (1734).

Then, it becomes necessary to ask, what of Native identity under the law? It could be considered an alienable legal identity through disenrollment and the many ways that removal of Native identity is enacted in policies like blood quantum requirements. In other words, since disenrollment is a construct of federal Indian law that makes Native identity alienable in its retraction of the legal privileges that it provides, there exists a legal logic opposite to that of whiteness in the law. Consider the 1978 *Santa Clara Pueblo v. Martinez* U.S. Supreme Court decision, in which a female tribal member sought declaratory and injunctive relief under the Indian Civil Rights Act against the enforcement of a tribal ordinance denying membership to children of the female members who marry outside of the tribe. Respondent Julia Martinez was a "full-blooded member" of the Santa Clara Pueblo and resided on the Santa Clara Reservation. According to tribal

law, her marriage with a Navajo man in 1941 disqualified her children from tribal membership and thus voting in tribal elections or holding tribal office.

Justice Thurgood Marshall ruled in favor of tribal sovereignty to settle the matter, but definitions of indigeneity still relied on “blood” and land. In the case of Julia Martinez’s death, her daughter, Audrey Martinez, was not permitted to inherit her mother’s land, inhabit the reservation, or receive possessory rights to tribal lands (*Santa Clara Pueblo v. Martinez* 49). Despite her cultural link with the Santa Clara Pueblo, Audrey was divested of her tribal membership and claims to land. Due to this, *Santa Clara* is largely responsible for the sanctioning of disenrollment and in perpetuating this colonial legacy today (Marquez 198). While it is the sovereign right of Native nations to determine their membership requirements, I contend that policies like these are endemic of strict, colonial definitions of indigeneity that aim to remove Native claims to land.

The family and descent are key to understanding how racial fictions of “blood” entitle people to claim identities and thus property rights. As Tiya Miles postulates from Patricia Hill Collins, the family allows scholars to understand how race, gender, class, and nation are interrelated (3). Questions of heteronormativity, heteropatriarchy, and blackness are inseparable from these queries of whiteness and indigeneity as blackness has similarly been set to engulf indigeneity that furthers settler claims to Native land by not recognizing Afro-indigeneity. Notions of heredimant under patriarchy underpin this since inheritance is passed through the father (like in *Santa Clara Pueblo v. Martinez*) that genders, sexualizes, and racializes the stewardship of Native land and concomitantly indigeneity (Finley 35).

Furthermore, in settler colonialism, heteronormative relationships are sanctioned as the only form of the “rightful” passage of indigeneity through “blood” and therefore the ability to hold land and tribal membership. Inheritance of indigeneity, and thus rightful stewardship of Native

land, is passed through the father and regulated by the creation of a mechanism to measure the capability to own property (allotment) by blood quantum (Million 107). Heteronormativity and its origins in white supremacy regulates this mechanism of capability to own property through the state and its regulation of sexuality through heterosexual marriage that has historically been used to determine individuals' fitness for citizenship and its rights and privileges (Rifkin 6). As a result, it affects Native residency, family formation, collective decision making, resource distribution, and land tenure and is all encompassing in its regulation of Native identity, life, and governance (8).

Part and parcel of monitoring and regulating descent based on gender and sexuality is the hyperdescent rule, or the opposite of the hypodescent "one drop" rule, that formulates indigeneity as disappearing with each successive intermixture under heteronormative patriarchy. Indigeneity's hyperdescent rule postulates that consecutive generations of Native people are legally considered "white" even though socially or economically they are not recognized as white (Arvin 17). According to Maile Arvin, this confounding contradiction of the law in writing and the law "on the ground" in defining Native peoples as "almost white" is a way of managing white racial fears of the "potential blackness of Indigenous peoples" (17). In company with the inherent anti-blackness of these settler colonial logics, they also racialize Native peoples' political claims of sovereignty as a biological claim that constructs Native peoples as a race and not a sovereign people (21). By defining indigeneity in strict monolithic terms as solely racial and not political, religious, or personal, whiteness reinscribes its own authority in the law in mutable exclusionary ways.

For instance, under the rights to use and enjoyment, whiteness is simultaneously both a passive identity and an active property interest that can "both be experienced and deployed as a

resource” (Harris 1734). As a deployable resource, it wields social, political, and institutional authority to reassert its own prominence in addition to reinforcing the racial hierarchy of reputation and status (1734). At the center of this is the idea of self-ownership, that reputation is earned through effort and thus property (1735). Reputation is both conferred by honor, originating from status, and property that has market value (1735). However, whiteness is not earned, but is bestowed by the “inherent unequal status of dominant and subordinate groups” (1735). For example, calling someone “Black” was to defame their reputation because of whiteness’ prominence in the hierarchy of status and reputation (1735). In disenrollment, it works in an opposite manner since it limits who is Native by retracting Native identity and disparages someone if they do not have the legal documents to demonstrate their required indigeneity in order to be enrolled in a Native nation.

It is not difficult to find a large issue in this rationale since the sheer violence and destruction of U.S. settler colonialism and genocide removed most possibilities of satisfying U.S. legal requirements to demonstrate indigeneity. Documentation of genealogies to prove indigeneity made at the time of the Dawes Allotment Act excluded Afro-Native people in addition to a whole assortment of Native peoples displaced by the havoc wrecked not only on Native land but Native societies, customs, and peoples. Even the requirement of U.S. legal documentation in order to verify one’s Native identity is at the heart of the issue. The legally constructed “order” of allotments did not rectify the absolute chaos generated by conquest and onward. Yet the U.S. legal system continues to operate under this false assumption that U.S. laws are commensurable with sovereign Native nations or that legal prescriptions of indigeneity are inclusive of all Native peoples.

In conjunction with the issue of seeking recognition from a government not concerned with Native interests, exclusion from indigeneity has acted as a strategy to weaken Native claims to sovereign and sacred land and governance (Coulthard, *Red Skin, White Masks*, 3). Whiteness' absolute right to exclude is integral to understanding this and denotes how whiteness is not defined by being a unifying identity and property interest, but is given form by defining who is not white (Harris 1736). Scholars in and outside of the legal field have written extensively about the acceptance into the preferred class of whiteness such as that of the Irish or Syrians who were eventually considered legally white. This in no way implies that they are allowed to enjoy the full privileges of whiteness since this has been a strategic maneuver in which to sow more divisiveness among disenfranchised groups by meting out whiteness but withholding its entitlements. The exclusivity of whiteness is predicated on both exclusion and racial subjugation and thus took the form of status property with its prizing of white racial identity that it denies for all subordinate groups (Harris 1737). For instance, the one drop rule that excludes people from whiteness by classifying any African ancestry as non-white functions in cooperation with the principle that Native blood taints the metaphorical purity of whiteness. Still, U.S. law created the fiction that "civilized" behavior could allow for Native people to assimilate to the privileges of whiteness while making indigeneity an exclusionary category that one can be purged from.

The Dangers of Disenrollment and the "Politics of Recognition"

Historically, assimilation in the U.S. has taken the form of policies like the American Indian Citizenship Act of 1924 that implicitly intended to erase indigeneity when it made all Native peoples U.S. citizens regardless of their tribal status with no respect for Native sovereignty (Indian Citizenship Act of 1924). By accepting Native peoples into the class of citizens, property rights to land were closely associated with whiteness and citizenship. In contrast to the purported intent of

the law, the 1924 statute did not have a lasting positive effect for Native peoples exercising the rights of citizenship, such as voting, since there was rampant disenfranchisement. That is not to say that all Native peoples wanted citizenship since it was a hallmark of assimilation that some resisted and some advocated for. Nevertheless, by tying whiteness to property rights in land through citizenship, it positioned indigeneity in opposition to whiteness as a colonial practice.

I consider disenrollment to be a modern continuation of these assimilation practices. Disenrollment removes members from tribal citizenship, a decision of each sovereign Native nation, but continues to inscribe indigeneity in the fiction of “blood” and ascribes it negative racial and political meaning. Although it arose largely due to the distribution of gaming revenues to tribal members in the last 25 years, it is a foreign concept to Native nations that contributes further to the implicit divestiture of Native sovereignty (Galanda and Dreveskracht 385). Key to popularizing disenrollment was the promise of profits from economic development within Native nations. If Native nations were able to increase their individual financial disbursements by disenrolling members who do not satisfy their requirements, they would be able to enjoy more profits from economic development projects. Glen Coulthard, in conversation with Mohawk scholar Taiaiake Alfred, criticizes this in that “‘capitalist economics and liberal delusions of progress’ have historically served as the ‘engines of colonial aggression and injustice’” (Coulthard, “Subjects of Empire,” 447). Disenrollment’s ramifications are more than economic since members’ removal from enrollment affects their identity, racial classification, and political privileges since Native race and political statuses are intertwined (Ablavsky 1068). By fixing indigeneity on a precarious racial concept that originated from white property rights, disenrollment aims to remove a claim to Native land and de-property Native peoples when it divests a Native person of their legal indigeneity and its provisions.

One of the many ways this occurs is by way of strict blood quantum regulations in order to be enrolled in a Native nation that were introduced by the Indian Reorganization Act in 1934. The federal government bears the responsibility for promoting tribal membership criteria on blood quantum since the formal tribal enrollment of members is a post-contact invention. Previously, Native peoples did not have a concept of race. They did have ideas of descent and ancestry that were and continue to be a tribal concern originating from a Native culture's most sacred narratives (Goldberg 1392). However, non-Native courts have rejected descent-based criteria while racializing tribal membership and imposing cultural performance requirements that misunderstand the nature of tribal membership (1393). As a result, tribal membership criteria, or fundamental kinship and clan ties, are associated with legally prescribed racial classifications (1394). I contend that these practices are in place as part of the protection of white property rights as they deracialize indigeneity in order to erase Native peoples and racialize indigeneity in order to distance Native peoples from achieving rights equitable to whites.

Arvin's "logic of possession through whiteness" (20) and its conversation with Harris' "whiteness as property" (1709) offers some clarity as to why Native peoples are conversely racialized and deracialized in U.S. law. Historically, whiteness has been inscribed with legal privileges deriving from European concepts of personhood and citizenship but constructs a fiction of indigeneity to Native lands in order to justify settlers' continuous occupation and expropriation of land through settler colonialism. As a result, the place and Native people become exoticized and feminized "possessions of whiteness," possessions that are rendered unable to obtain the privileges of whiteness themselves (Arvin 3). Settler colonialism enacts this by commodifying land and natural resources, imposing a non-Indigenous legal-political apparatus, and defining ways of being and knowing in European post-Enlightenment terms (15).

This becomes more cogent after understanding what tribal membership and disenrollment truly mean, considering the limits of Native sovereignty, and taking these concepts out of their Anglo-American legal context in order to view the colonial legacy. A tribal government's ability to determine, define, and limit membership is distinct from retracting membership from an individual who has satisfied pre-existing criteria (Galanda and Dreveskracht 389-390). The distinction lies in membership being part of inherent sovereignty while disenrollment is not since it is a construct of federal law. "Membership" and "enrollment" from Anglo-American law do not conceive of Native "citizenship," "kinship," or "belonging" in the same way as Native nations (389-390). According to the Little River Band of Ottawa Indians Tribal Court of Appeals, "tribal membership for Indian people is more than mere citizenship in an Indian tribe. It is the essence of one's identity, belonging to community, connection to one's heritage and an affirmation of their human being place in this life and world" (390). Thus, dispossession of land and of tribal membership are closely tied and deeply personal, which U.S. law aimed to diminish from contact onward through "possessions of whiteness."

As a settler colonial dispossessing strategy, it breaks the relationship between bodies and land as Geraldine King advances (Arvin 21). By asserting that indigeneity is a racial category and not a politically sovereign or legally property holding identity, the "Native" category is stripped of both its land and identity (17). Indigeneity is a natural claim to a place that loses its possessory meaning when it becomes racialized as different and simultaneously deracialized as "almost white" (27). Moreover, indigeneity becomes a commodity for white people to assert ownership to in order to claim a place that is much more than a racial identity or political relationship, but personal, religious, and communal (27). Audra Simpson's groundbreaking anthropological study

and positing of the "ethnographic refusal" of Mohawk peoples to answer inquiries from anthropologists sheds light on the complex nature of indigeneity.

Simpson writes that despite Mohawk persistence under centuries of settler occupation that it "has required and still requires that they give up their lands and give up themselves" (2). Divestment of Native identity is not only giving up one's land, but giving up oneself to face alienation, violence, and discrimination. This is difficult to understand from the way in which we have constructed identity in a settler colonial society that means to dispossess by ascribing property rights to whiteness but elucidates how damaging restrictive legal classifications of indigeneity are to preserving Native identity predicated on land, community, and sovereignty. It is hard to envision a future without these conceptions of identity, but First Nation scholars Leanne Simpson and Glen Coulthard offer some hope.

Their advancement of the notion of "grounded normativity," or "place-based solidarity," that signifies a deep reciprocity fostered by an intimate relationship to place supercedes racial fictions such as "blood" to construct Native identity (Coulthard and Simpson 254). It embodies practices and knowledge that "teaches us how to live our lives in relation to other people and nonhuman life forms in a profoundly non authoritarian, non dominating, and non exploitative manner" (254). This and collective reciprocal self-recognition, as advanced by Simpson, hold great restorative potential in ameliorating colonial notions of Native identity and membership (Simpson 184). Important to this is the "politics of recognition" that Coulthard cautions against because current ideas of reciprocity and mutual recognition in the "politics of recognition" in its "contemporary liberal form promises to reproduce the very configurations of colonialist, racist, patriarchal state power" that Native peoples have historically criticized (Coulthard, *Red Skin, White Masks*, 3). Therefore, alternatives to genealogical and racial definitions of sovereign Native

identity that are not strictly racial or political more fully embody the political, communal, and spiritual meanings of Native identity.

Still there is still more to be postulated about the connections between the racial fiction of “blood,” land, and indigeneity. Scholars’ writings about Native peoples’ conflation with the land elicits questions of how these ideas relate to one another within the context of the Dawes Allotment Act and blood quantum (Finley 35). In addition, these are not geographically confined questions as the Indian Act of 1876 in Canada has had very similar consequences for First Nation peoples and Latin America is subjected to a different yet related conundrum in which there is little judicial protection or recognition of Native sovereignty. Even if these policies were provided, Coulthard underscores how “recognition” is not a panacea to the myriad of issues raised by continued settler colonial occupation.

Scholars like María Josefina Saldaña-Portillo and Audra Simpson have drawn lines of connection between the distinct historical processes that shaped racial geographies across Mexico, the United States, and Canada. Mesoamerican Native peoples being recognized as free vassals of the Spanish Crown entitling them to access to land and Mohawk peoples split by the borders of Canadian and American nation states require broader discussions outside of the confines of modern North American nation states (Martínez 488). This remains a future area to explore in more depth along with a more robust intersectional analysis of race, sex, gender, and sexuality that requires a closer look at Afro-indigeneity across the Americas. Disenrollment in U.S. law and its erasure of indigeneity are part and parcel of other political, social, legal colonial projects in the Americas that require further examination.

Albeit this article is a tailored analysis of federal Indian case law around citizenship, identity, and whiteness, this paper’s relevance extends into how identity, race, and law interact in

the Americas under the legacy of settler colonialism, capitalism, and slavery. Specifically, disenrollment impacts Native peoples because of U.S. legal prescriptions of Native identity, but the legal system from which it emerged adversely affects race and identity under the law. Consider Harris' grandmother "passing" as white in 1930s Chicago after migrating from Mississippi through self-denial and participation in the property interest in whiteness (Harris 1711-1712). Although indigeneity and blackness are characterized by distinct historical processes, they share their roots in white heteropatriarchy, which underscores the importance of explicating settler colonial projects in the Americas and the multifaceted ways in which they operate (Smith 68).

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