

ON 'MODEST PROPOSALS' TO FURTHER REDUCE THE ABORIGINAL LANDBASE BY PRIVATIZING RESERVE LAND®

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Abstract / Résumé

This responds to Christopher Alcantara's "Individual Property Rights on Canadian Indian Reserves" that appeared in XXIII:2 (2003) of the *CJNS*. Some special interest groups—mainly but not exclusively of the political far Right—have suggested that privatizing Canadian 'Indian Reserve' land would facilitate ameliorating the dreadful conditions endemic to Reserves. This paper explores the experience of U.S. First Nations when Reservation land was privatized. Under the 1887 *General Allotment Act* (known as the Dawes Act) the U.S. Aboriginal land-base shrank from approximately 150 million acres to only about 48 million by 1935, when the Dawes Act was reversed.

L'article répond à l'article de Christopher Alcantara intitulé « Individual Property Rights on Canadian Indian Reserves », qui a paru dans le n° 2 du volume 23 de la *CJNS*. Certains groupes d'intérêts, qui proviennent principalement, mais non exclusivement de l'extrême-droite politique, ont suggéré que la privatisation des terres des réserves indiennes du Canada faciliterait l'amélioration des conditions déplorable qui sont endémiques dans les réserves. L'article explore l'expérience des Premières nations des États-Unis où les terres de réserve ont été privatisées. En vertu de la *General Allotment Act* de 1887, connue sous le nom de « Dawes Act », l'assise territoriale des Autochtones américains s'est rétrécie pour passer d'environ 150 millions d'acres à environ 48 millions d'acres en 1935, lors que la Dawes Act a été révoquée.

Reform is always afoot in
the field of Indian affairs.

-Vine Deloria Jr. (1933-2005) & C.M. Lytle¹

Over a decade ago the Royal Commission on Aboriginal Peoples recommended that Canada provide First Nations with lands “sufficient in size and quality to foster Aboriginal economic self-reliance and cultural and political autonomy.”² Although according to the 2001 Canadian Census ‘status Indians’ numbered only 558,175, Aboriginal people constitute at least 3.5 percent of the population.³ Reserves account for under 0.5 percent of the land – 6.5 million acres fragmented into 2,242 tracts with an average size of only 2.89 acres.⁴ There are powerful special interest groups in Canada that, rather than appreciating how much has been appropriated from Aboriginal people at cut-rate prices, remain keen to be rid of the nuisance of treaties, land-‘claims’ cases, constitutional negotiations involving Aboriginal rights, time-consuming environmental impact studies, and the costs and embarrassments associated with the Department of Indian Affairs.

Given their importance to people living on many Canadian Reserves (or who would if the *Indian Act* and other factors allowed), ‘Certificates of Possession’ (CPs) have been an unaccountably neglected topic for research. This was demonstrated by Christopher Alcantara’s 2003 *Canadian Journal of Native Studies* article on “Individual Property Rights on Canadian Indian Reserves,” a compressed version of his 2002 University of Calgary M.A. thesis “Certificates of Possession: A Solution to the Aboriginal Housing Crisis.”⁵ Alcantara’s thesis supervisor was U.S.-born and educated Reform-Conservative political scientist Tom Flanagan. Professor Flanagan has made a career, academic and otherwise, of opposing Indigenous rights, most recently those of the original Australians.⁶ How prominent Flanagan is amongst Canada’s leading new Conservatives is illustrated most pointedly by his recent book *Harper’s Team: Behind the Scenes in the Conservative Rise to Power*.⁷

We now turn to consider the fact that, in many parts of Canada, CPs represent the most common type of Reserve land-holding⁸ and the thin edge of the proverbial wedge for the derogation of Aboriginal rights by those who are politely termed ‘neo-Conservatives.’⁹ Among the more recent, if least subtle, expressions of this was “Road to Prosperity – Five Steps To Change Aboriginal Policy,” a September 2005 pronouncement from the Calgary-based Canadian Taxpayers Federation ‘Centre for Aboriginal Policy Change.’ It called for abolition of the *Indian Act* and the “current Native reserve system,” including privatization of Reserve land.¹⁰

Its policy-makers seem to have been misled by the erroneous notion—as voiced by Flanagan in *First Nations? Second Thoughts*—that “Treaties are the means by which aboriginal rights...are recognized and entrenched in the constitution.”¹¹ Rather, treaties are legal instruments defining relationships between and amongst *nations* – in the Americas, European relative new-comers (historically speaking) and long pre-existing Indigenous sovereignties. As the former demographically overwhelmed the latter, enveloping them within White-settler states, treaties secured land, water, timber, mineral, and other resources for the dominant society at Aboriginal expense.¹²

In the Abstract to his article Alcantara stated it to be a “common misconception...that Indian reserves in Canada do not have individual private property.”¹³ He went on to claim that CPs allow “individual Indians to obtain *ownership* [emphasis added] of a tract of reserve land.”¹⁴ This is incorrect; neither individually nor collectively do ‘Indians’ own Reserves. Alcantara stepped back from this misstatement later in his article, viz. “The CP system gives individual Indians living on reserves property rights that fall somewhere between fee simple [i.e. out-right ownership] and life estate interests.”¹⁵ Alcantara skated over the *qualitative* difference between Reserves as they are now and as they would be—or *cease to be*—if privatized. Miserable though conditions on many Reserves are, they are remnants of homelands ‘loaned back’ to Aboriginal people as rock-bottom payment for their ancestors having signed treaties. Alcantara implied that privatization of Reserve land would be a modest step in the right direction, one that might even be couched in terms compatible with Aboriginal self-government, or more accurately ‘self-administration.’ On the contrary, land-privatization would destroy Reserves as homelands and be a heavy blow against Aboriginal rights and a major advance for ‘civilizing’ assimilationism.¹⁶ This paper argues that the U.S. experience shows what happens when land supposedly ‘Reserved for Indians’ undergoes privatization.

Alcantara began the body of his article with reverences to veteran Cold War crusader Richard Pipes and Peruvian neo-conservative Hernando de Soto as to the sanctity of individual property,¹⁷ later quoting John Locke (1632-1704) that “Every man has a property in his person.”¹⁸ But it really *does not do* to fail to acknowledge that in Locke’s day millions of ‘persons’ were deemed to *be* property—those seized as slaves from a multitude of African societies, of course, but also Indians – Timacus, Guales, Apalachees, and many others—some shipped to the Caribbean from the Carolinas.¹⁹ Amerindians were always ‘poor investments’ because Old World diseases to which they had no immunity killed them more quickly than did the grossest exploitation of the Africans

beside whom they laboured. As Squadrito explained in her assessment of Locke's philosophical influence on Euro-America, he "was a member of companies created to profit from slavery and overseas possessions." Locke's interest in and knowledge about the colonies "was more than academic."²⁰ He was a prominent investor in the Royal African Company and the Bahamas Adventurers, both formed in 1672, the former to transport enslaved workers from Africa, the latter to use and trade them amongst the Bahamas, Virginia, and the Carolinas.²¹

Alcantara was similarly brief and one-sided when alluding to American Indian experience, relying on only one author – Terry Lee Anderson, a prominent George W. Bush advisor on public land issues. In 1999 Anderson gained notoriety as the primary author of a Cato Institute policy study titled "How and Why to Privatize Federal Lands." The study's recommendations were drastic in that the Bureau of Land Management and the Forest Service, with the Bureau of Indian Affairs (BIA) a distant third, control tremendous amounts of territory.²² Flanagan and Alcantara follow Anderson's lead, albeit expressing their extreme view in a discreet footnote: "Although it would be a topic for another paper, we would also suggest that provincial and federal ownership of Canada's land and natural resources has been a drag on the whole country's economic development."²³

Flanagan and Alcantara asserted that Anderson "demonstrated that individual allotted Indians lands in the American west are more productive than tribal or federally controlled Indian lands."²⁴ Actually, Anderson did not demonstrate this. The most he achieved to this end was to show that *some* privately-owned land is more productive than land whose use is entangled in a legal quagmire created and enforced by the U.S. government. For example, some 'tribal' land held by the Deneh/Navajo nation is at least as beneficial to those who live on it as private land is to its owners, but without the constant threat of loss, including due to taxation.²⁵ Bobroff's "Retelling Allotment" is extremely interesting on the Deneh/Navajo 'use it or lose it' system of land-allocation. He makes the point that Indigenous property-systems varied "across time, geography, cultures, and resources." Hunting and gathering societies that existed in most of what is now Canada "typically had fewer property rights in land, although these varied, often depending on the extent of the area relied upon for food." Most rights to land related to families, however extended, to clans and bands. Many recognized property rights in intangibles—sacred stories, for example—"prefiguring the development of intellectual property law."²⁶

Although Anderson referred to Carlson's 1981 classic *Indians, Bureaucrats and the Land*—even including a chapter by Carlson in his 1992

edited book²⁷—for ideological reasons he chose not to take fully on board the reasons for Carlson’s very revealing sub-title: *The Dawes Act and the Decline of Indian Farming*.²⁸ In his *CJNS* article, Alcantara simply avoided any mention of the *General Allotment Act*, commonly called the ‘Dawes Act’ for the Senator who sponsored it.²⁹ Far from being a stereotypical Indian-hater, Massachusetts Republican Henry L. Dawes was a leading light of the liberal ‘Friends of the Indian’ organization that from 1883 until 1916 held annual conferences at Lake Mohonk resort in New Paltz, New York. “Sure in their Christian righteousness, allotment advocates had a messianic faith”—how familiar this sounds—“in the civilizing force of private property.”³⁰ During the era of the Dawes Act, “the most disastrous piece of legislation in U.S. history concerning Indians,”³¹ the American Indian land-base was made to shrink from approximately 150 million acres in 1887 to only about 48 million by 1934.³² Dawes’ modest intent was to “take the Indians out one by one from under the tribe.... Before the tribe is aware of it[,] its existence as a tribe is gone.”³³ The Dawes Act was a coercive instrument passed less than four years before the December 1890 massacre of some 300 Miniconjou Lakota, mostly women and children, at Cankpe Opi Wakpala (Wounded Knee Creek), South Dakota.

While privatization of Reservation land was neither new to the 1880s nor primarily a response to Euro-American conquest of the West, the Dawes Act turned what had been sporadic and piecemeal assimilationist land-grabbing into a total, long-lived, and highly-effective policy. Over a century before the U.S. made its unilateral declaration of independence from Britain, land allotments—some ‘in-trust,’ others out-right, and ranging in size from 160 to 640 acres—had featured in treaties between the British and their Indian allies. During the early decades of the U.S. republic, land privately allotted to Indians so quickly fell into the hands of traders and agents, for example of John Jacob Astor’s American Fur Company, as to provide “a clear indication of the purpose for which they were granted.”³⁴ Allotment then became associated with Removal,³⁵ and the Removal Era (1816-46) with the consolidated brutality of racialized slavery of African-Americans across the U.S. South. Many members of the ‘Five Civilized Tribes’³⁶—the Ani’Yun’Wiya (Cherokees), Choctaws, Chickasaws, Mvskoke/Creek Confederacy, and to a lesser extent the Seminoles—had accepted allotment as an alternative to Removal. Instead they found themselves ‘ethnically cleansed’ from their south-eastern homelands and sent on the ‘Trail of Tears’—some in chains, and with much loss of life³⁷—to Oklahoma Territory. Under duress, their land was sold to Euro-American settlers “for the greater glory of liberty, civilization, and profit.”³⁸ Between 1830 and 1871 (the end of the Treaty-

making Era), sixty-seven Indian nations were encouraged to accept allotment provisions as part of treaties; fewer than five percent did so.³⁹ Kiowas, Comanches, and Apaches who ostensibly agreed to the 1867 Medicine Lodge Treaty soon began to object on grounds their acquiescence had been achieved by fraudulent misrepresentation by translators.⁴⁰

Under the Dawes Act, each head-of-family on a Reservation undergoing Allotment was to receive 160 acres. Unless they were orphans, those under 18 got 40 acres. Orphans and single people aged 18 and over were to receive 80 acres. In 1891 this was amended to, in theory, 80 acres of arable land or 160 acres fit for grazing. In practice, local conditions caused this to vary greatly. Since Allotment involved surveying and, under Section II, allowed for some choice as to where on the Reservation people took-up their allotments, the process typically took several years. The 1928 Meriam Report would complain that many “made selections on the basis of the utility of the land as a means of continuing their primitive mode of existence” – i.e. where water, fire-wood, and wild foods were available. Few were “sufficiently far sighted to select land on the basis of its productivity when used as the white man uses it.”⁴¹ Put another way, they wisely looked for their means of survival on land ‘the white man’ would not bother with.

Allotment was a once-only operation, the federal government assuming that Indian numbers would continue dropping to the vanishing-point, from an estimated 600,000 in 1800 to only about 250,000 by the 1890s. Since the Dawes Act was passed shortly before the beginning of demographic recovery,⁴² landlessness rapidly became a major problem on many Allotted Reservations. Landlessness worsened already poor health conditions, particularly the incidence of tuberculosis. In 1913 an investigator at White Earth Anishinaabe Reservation in Minnesota reported “in one desolate hut, three women who although blind” – perhaps due to trachoma, which was endemic – were about to be evicted “on a mortgage[,] and their case was typical of many others.”⁴³ Opponents of the Dawes Act had warned of such consequences. In 1883 delegates of the Mvskoke/Creek Nation had presented Congress with a 60-page analysis of how private land allotment had already affected the Miamis, Sacs, Foxes, Ottawas, Kansas, Pottawatomies, Shawnees, Kickapoos, Wyandots, and several other nations. Saying that the “death-rate in the bodies referred to increased,” they reported, “it will be found that more than half of the Indian communities who have tried the experiment, have not only been reduced thereby to extreme destitution, but have actually suffered a considerable reduction in their numbers.”⁴⁴

Reservations chosen for Allotment were in the areas of “greatest

White interest,” i.e. where rainfall was sufficient and the land suitable for commercial farming and within reach of Euro-American population centers.⁴⁵ First targeted was the Great Oceti Sakowin (Sioux) Nation that covered a good deal of the Dakota Territory. It was reduced to seven much smaller Reservations: Cheyenne River, Crow Creek, Lower Brulé, Pine Ridge, Rosebud, Sisseton, and Yankton, of which Rosebud (by 1900) and Standing Rock (by 1907) were totally Allotted, the rest largely so. Allotment was also vigorously pursued in Minnesota, Wisconsin, Nebraska, Montana, Idaho, Oregon, and Washington.⁴⁶

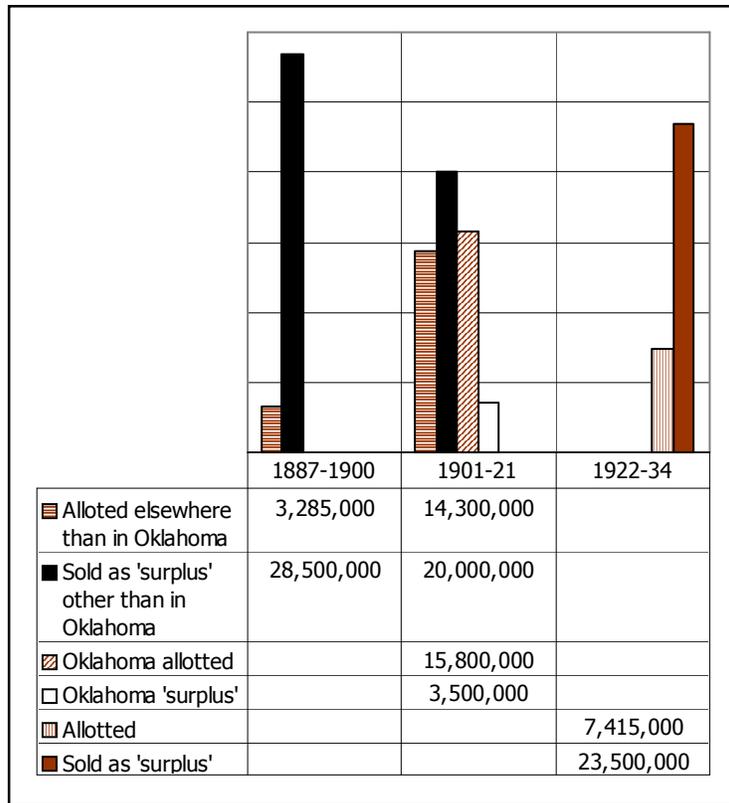
Under Section V of the Dawes Act, allotments were to be held in trust by the BIA for a minimum of 25 years. However paternalistic, this was ‘liberal’ in that it postponed land-loss. When an allottee died during this period, the land was divided according to laws on intestacy in the state concerned. As happens when small-holdings are parcelled-out amongst heirs, many allotments became—in the terminology of U.S. ‘Indian law’—fractionated well past the point of uselessness. Many years after the 1897 death of Anishinaabe-kwe (Chippewa woman) Lizette Denomie, her 80-acre allotment was divided amongst 39 heirs, 17 receiving less than an acre. Many such bits of land were either abandoned or, once the law allowed, sold. Between 1903 and 1910 over 775,000 acres were lost from the Indian land-base through such sales. The haemorrhage was further encouraged by the fact that any heir the BIA deemed competent could insist on the sale of the entire allotment. The likelihood of being found ‘competent’ was influenced by whether the heir spoke English, if s/he was of ‘mixed blood,’ and how anxious Euro-Americans were to get hold of the land. Since surviving records show it was only very rarely that Indian people were able to buy land that others had to sell,⁴⁷ allotted Reservations quickly developed checker-board patterns of land-tenure. The close proximity of white settlers “was expected to edify Native people,”⁴⁸ but was disastrous for what remained of Reservations, then and today.

Under Section VIII of the Dawes Act, survivors and descendants of the ‘Five Civilized Tribes’ plus the Osages, Miamis, Peorias, Sacs, and Foxes of Oklahoma Territory and the Onodowaga/Senecas of the Haudenosaunee/Iroquois Confederacy in northern New York were exempt from Allotment. Within a decade the ‘Curtis Act’ (1898) reversed their exemption to clear the way for Oklahoma to become a state. Between 1901 and 1921, 101,239 allotments were made covering 15.8 million acres of Oklahoma, with a further 3.5 million sold to settlers, as shown by Figure 1.⁴⁹

Under Section V of the Dawes Act, the proceeds from the sale of former Reservation land—averaging \$1.25 per acre over the life of the

Act—were subject to appropriation by Congress for the “education and civilization” of Indians.⁵⁰ Between 1887 and 1900, elsewhere than in Oklahoma, approximately 32,800 allotments had parcelled-out 3.285 million acres. A further 28.5 million acres had been deemed ‘surplus’ and sold to clamouring homesteaders and to railroad, mining, and other such large enterprises. Some was turned-over to the National Park Service and the U.S. Forest Service, while still other acreage became military bases.

Figure 1
Acres allotted (40.8 million) and sold as ‘surplus’ (75.5 million)



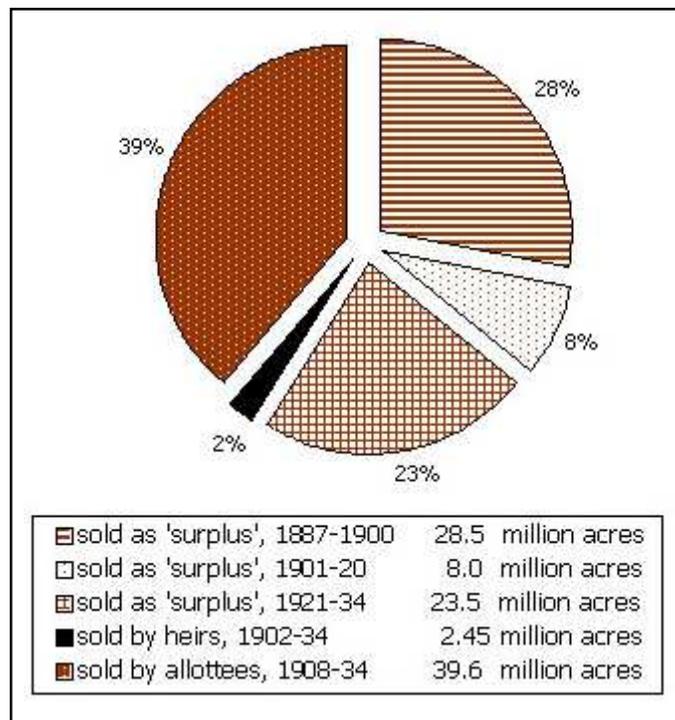
An official organizing Allotment at Rosebud complained of “kickers” resisting the process by refusing to accept land. At the Yankton Sioux Reservation, Army troops forced residents to accept allotments. Government agents admitted that the Cheyenne River Sioux, Osage, Flathead, Coeur d’Alene, Kickapoo, Potawatomi, Wichita and several other nations were also hostile.⁵¹ At Lapwai, Washington, a Nez Perce

spokesman said “How is it ... that we have not been consulted about this matter? Who made this law?... This is our land by long possession and by treaty.”⁵² Kiowa Chief Lone Wolf challenged the right of Congress to force Allotment against provisions of the 1867 Medicine Lodge Treaty. In 1903 *Lone Wolf v. Hitchcock* (E.A. Hitchcock being the Secretary of the Interior) reached the Supreme Court, which ruled that “Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty.... It is to be presumed that in this matter the United States would be governed by such consideration of justice as would control a Christian people in their treatment of an ignorant and dependent race.”⁵³ Not for nothing is *Lone Wolf* considered ‘the Dred Scott Case of U.S. Indian law,’⁵⁴ its message being that ‘treaties are made to be broken’ by the dominant society whenever, wherever, and for whatever purposes. In Oklahoma the ‘Crazy Snake’ movement among the Mvskoke/Creeks⁵⁵ was joined by dissident Choctaws, Cherokees, and Seminoles. Their leader, Chitto Harjo, likely died as result of a 1909 clash with the Oklahoma National Guard, “one of the last times the United States resorted to military force to resolve an Indian conflict.”⁵⁶

The peak year for Allotment was 1900, aptly illustrated by President Theodore Roosevelt’s 1901 State of the Union comment that the Dawes Act was “a great pulverizing engine to grind down the tribal mass.” He had appropriated this image from a speech made by a leading ‘Friend of the Indian’ at the 1900 Lake Mohonk Conference.⁵⁷ The Dawes Act was belatedly amended to allow allotment-owners, although subject to BIA approval, to will their land to whomever they chose. This kept more allotments together, reducing the rate of sales by heirs during the period 1910-18 to 412,000 acres, a 45 percent reduction compared with 1902-10. Unfortunately, because oil was found in Oklahoma, the rate of sales subsequently resumed at a disastrous pace.⁵⁸ Although only a comparatively small percentage of the Dawes era loss of the Indian land-base came about by way of sales by heirs (see Figure 2),⁵⁹ as Holford emphasized, it exacerbated the development of a Reservation sub-class of people without land. By 1930, on the Klamath Reservation in Oregon for instance, approximately 500 young people were landless.⁶⁰ Although Indian labour was in less demand than Indian land, some did take up wage-labour in construction, in agri-business sugar-beet fields, and—during and after World War I—in urban industry.⁶¹ Between 1901 and 1921, apart from in Oklahoma, 85,860 more allotments were made—primarily in Minnesota, Montana, Wyoming, and the Dakotas—allocating some 14.3 million acres, with an additional 20 million sold as ‘surplus.’

In 1924 Congress conferred citizenship on Indians not previously deemed qualified because they were not landowners. Between 1922 and '34, 7.415 million more acres were allotted and 23.5 million sold as 'surplus.' This pattern, although less extreme (refer back to Fig. 1), resembled that of the first period of the Dawes Act. By the end of the Dawes era, 118 of approximately 213 Reservations had been allotted.⁶² Carlton provided figures as to annual sales of inherited (1904-34) and original allotments (1908-34).⁶³

Figure 2
Components of the loss of 102 million acres from the
Indian landbase, 1887-1934



By passing the 1934 *Indian Reorganization Act*, albeit without actually repealing the Dawes Act, "Congress halted the carnage of allotment."⁶⁴ The *IRA* a.k.a. 'Wheeler-Howard Act' was sponsored by a Senator from Montana and a member of the House of Representatives from Nebraska, both states where Reservations had suffered extensive Allotment. Franklin D. Roosevelt's 'Indian New Deal' was administered by

BIA Commissioner John Collier.⁶⁵ The intent of the *IRA* was to reorganize the Reservation system economically and politically. It restored some land to 'tribal' jurisdiction and encouraged the establishment of the kind of band council government with which we are familiar in Canada. It also applied brakes to the 'graduation' of allotments from 'in-trust' to fee-simple status and thus their potential sale out of the Indian landbase. A clear explanation of the workings of the *IRA* amongst three peoples who had been variously impacted by the Dawes Act can be found in Clemmer's "Hopis, Western Shoshones, and Southern Utes: Three Different Responses to the *Indian Reorganization Act* of 1934." Clemmer concluded his extensive discussion by observing that the *IRA* "halted some trends and initiated others, but...did not reverse anything."⁶⁶

In 1948 the first Hoover Commission's Committee on Indian Affairs reiterated that assimilationism, not Collier liberalism, must dictate policy. In 1953, in McCarthyite reaction against Collierism, Congress began to terminate recognition of 'tribes,' with over 100 eventually affected. Again Indian nations with particularly desirable land were targeted, eg. the Klamath and smaller groups in Oregon, and the Menominees in Wisconsin, whose victimization was not unrelated to their having avoided Allotment. 'Termination,' which continued until 1962, meant further displacement of Indian people—under the familiar rubric of 'emancipation'—this time to large cities including Los Angeles, San Francisco, Seattle, and Minneapolis-St. Paul.⁶⁷ An unforeseen consequence, although one that was foreseeable, was the radicalization of Indian youth as evidenced by the founding, in Minneapolis in 1968, of the American Indian Movement (AIM), the 1969-71 occupation of Alcatraz island, and the 1972 'Trail of Broken Treaties' which culminated in the occupation of BIA headquarters in Washington. A 71-day siege at Wounded Knee in 1973 was followed, at Pine Ridge, a 'low intensity' counter-insurgency war by the FBI against AIM and its supporters.⁶⁸

It is difficult to calculate, for the more than 70 years since the suspension of Allotment, just how much privately-owned land has been lost from the Indian land-base. First, 'Indian land' is of several types: fee-simple and 'in-trust' lands are difficult to statistically separate, and the latter is often confused with 'tribal' land. Second, under Section IV of the Dawes Act, a small minority of allotments, rather than being cut from Reservations, were instead constituted out of other government-owned 'public domain' land. This happened most noticeably in California (by 1914, 1,786 allotments)⁶⁹ where, during the nineteenth century, the establishment of Reservations had generally been overlooked in favour of what was in some cases out-right genocide.⁷⁰ Indian loss of such allotments is harder to track than loss within Reservations. Third, during

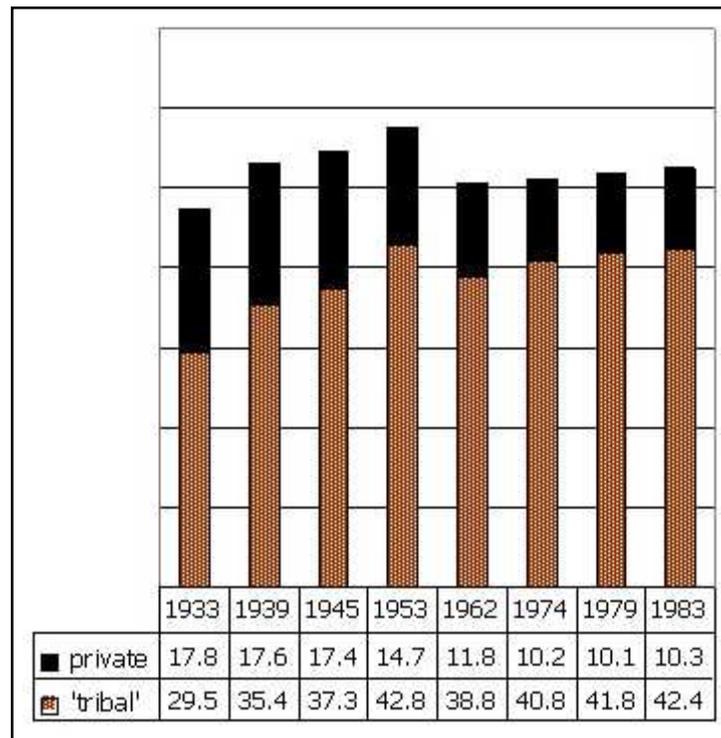
the later 1970s—perhaps a sign of those times, perhaps not—the BIA certainly did not encourage researchers.⁷¹ As explained by Sledd, BIA/Department of the Interior record-keeping has been less than exemplary both in terms of efficiency,⁷² and as it turns out (see below), honest accounting.

Although Anderson and Lueck provided figures for thirty-nine Reservations, their numbers carried qualifiers limiting their usefulness. Furthermore, they did not explain why they chose particular Reservations and not others. Most relevant for our purposes, their figures related only to the late 1980s,⁷³ encouraging no comparison with earlier decades. Working a few years earlier, Stuart had provided a table covering the fate of 'tribal' and allotted lands over five decades, beginning in 1933.⁷⁴ Unfortunately, though, he did not clearly differentiate 'in-trust' from 'fee simple' land. Still, comparing Stuart's figures for all Reservations as of 1983 (42.39 million acres of 'tribal' land, 10.27 million in allotments) with Anderson's data from 'selected' Reservations (12.8 million acres 'tribal,' 17.45 million 'fee-simple', 4.10 million 'in-trust'), the lack of correspondence is striking. Stuart also provided tables covering *all* Reservations in twenty-eight states for 1936, '53, '62, '74, '79, and '83.⁷⁵ He demonstrated that whereas the amount of 'tribal' land depleted—largely thanks to 'Termination'—from 42.78 million acres in 1953 to 40.77 million as of 1974, by 1983 this loss had been very largely made-up. The amount of land in private allotment fell to its lowest point by 1979, recovering slightly thereafter, as shown by Figure 3.⁷⁶ Although these findings contradict Anderson's rosy view of the healthy state of private landholding, neo-conservatives consider it beneficial when 'inefficient' owners (coincidentally Indians) lose their land to 'effective' ones (generally not).

Finally, Stuart also provided detailed figures covering twenty-three Reservations (19 with allotments)⁷⁷ for 1920, 1974, and 1983, as shown by Figure 4.⁷⁸ This allows for a degree of cross-checking of the above findings. Between 1920 and 1983, 16 of 19 Reservations lost allotment acres while the remaining 3 gained some.⁷⁹ The result was a net depletion of the land-base by 4,995,600 acres – again, a result that no doubt pleased the supporters of market forces since those thought to be 'inefficient' in their use of the land had been relieved of it. Considering 'tribal' land on these twenty-three Reservations, Stuart showed that 10 lost while 13 gained, for a net increase of 5,443,243 acres. No wonder, as was mentioned earlier, Anderson favours privatization of federal land, of which the BIA controls a sizable although not the major part.

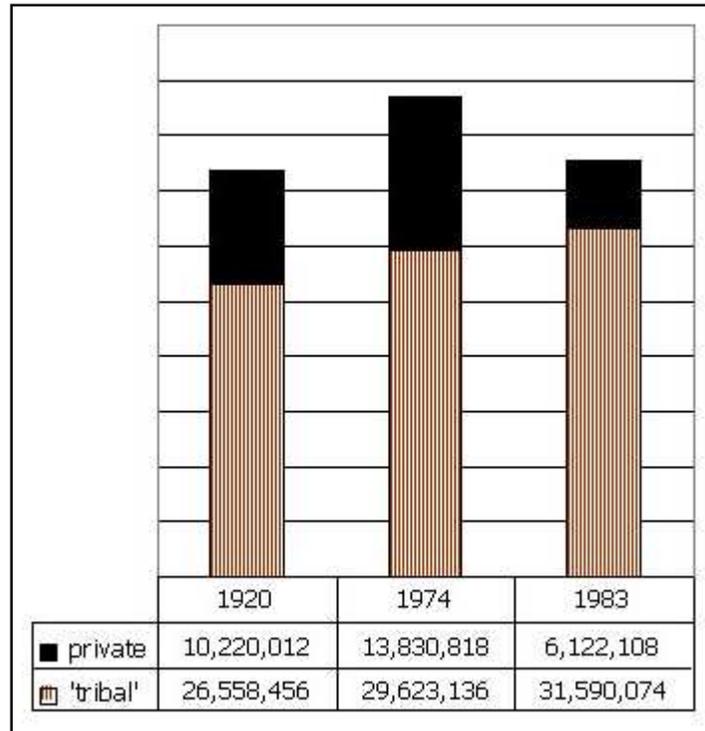
Against this background of Indian nations generally keeping-hold of their 'tribal' (as opposed to Allotment) land, we should note some tragic

Figure 3
'Tribal' and privately-owned lands on all Reservations
(millions of acres)



exceptions. In North Dakota, Turtle Mountain suffered devastating loss. Allotted in full by 1907, land in private ownership dropped from 43,820 acres in 1920 to 24,489 by 1983. 'Tribal' land, which had recovered from nil to 35,579 acres by 1974, was reduced to only 8,616 by 1983. Meanwhile, directly government-owned land at Turtle Mountain rose from nil to 517 acres as of 1974, back down to 140 by 1983. The over-all extent of Turtle Mountain Anishinaabe territory, the homeland of Leonard Peltier, was therefore depleted from 70,240 acres in 1974 to only 33,242 by 1983.⁸⁰ Another Reservation deserving of attention, heavily Allotted during the Dawes era, is Pine Ridge in South Dakota, statistically the most miserable place in the U.S. Infant mortality there is 5 times the U.S. national average, itself atrociously poor for the world's most over-developed country. The adolescent suicide rate is 4 times the U.S. national average, contributing to life expectancies of 52 years for women, only 48 for men.⁸¹ Neither Turtle Mountain nor Pine Ridge are mentioned in arguments promoting the privatization of 'Indian land.'

Figure 4
'Tribal' and privately-owned land on 23 Reservations,
19 with Allotment



Over time 'fractionation' of holdings continued to worsen such that by 1960 at least one in four private allotments had more than six owners. "How much easier it would have been," remarked Sledd in 2005, "to address the problem then!" Although in 1983 Congress passed the *Indian Land Consolidation Act* authorizing 'tribal' governments to adopt plans for consolidation of Reservation land through purchase, sale, or exchange, the BIA has approved very few of them.⁸² In 1984, at White Earth, Minnesota—a square land-tract 36 miles per side—people formed Anishinabe Akeng to try to reclaim some of the 93 percent of the 'Reservation' owned by non-Indians.⁸³

By the mid-1990s at least half and as much as three-quarters of the BIA's annual budget was being spent to administer 'lands in trust.'⁸⁴ Whistle-blower David L. Henry, a former BIA accountant, showed that malfeasance as well as bureaucratic incompetence had been operating.⁸⁵ In 1996 Elouise Cobell, a Montana banker from Blackfeet territory in northern Montana, set rolling the largest class action lawsuit ever

launched against the U.S. government—specifically the BIA/Department of the Interior and the Treasury—for over \$100 billion in unaccounted-for trust deposits, interest, and accruals. Ms. Cobell stated “I can tell you that many people depend on these payments for the bare necessities of life.... This is our money – revenue from leases or oil and gas drilling, grazing, logging, and mineral extraction on Indian lands.”⁸⁶ In 2004 Congress passed the *American Indian Probate Reform Act*, which came into operation in June 2006. Battalions of lawyers are engaged in sorting-out the mess created by the Dawes Act, a manifestation of assimilationist arrogance backed by greed that had “replaced myriad functioning and evolving tribal property systems with a single dysfunctional and unchanging system.”⁸⁷

In his *CJNS* article Alcantara remarked on Aboriginal people in pre- and post-Confederation Canada having rejected ‘enfranchisement’ and private allotment of Reserve lands. He blamed “Indian leaders” who, he wrote, “were successful in convincing their peoples not to enfranchise. What irked them was the fact that enfranchised Indians were given *tribal* land.”⁸⁸ Alcantara was implying that “Indian leaders” were then, and by extension are now, motivated by greed. Yet it is absurd to suggest that anyone concerned with Indigenous well-being should accept further reduction of the land-base, particularly with the Dawes Act disaster before them as a guide to what *not* to be conned or forced into.

In their *Queen’s Law Journal* article referred to earlier, Flanagan and Alcantara claimed that private property rights on Reserves would be “a useful institution but not a magic wand.”⁸⁹ As the first part of this paper showed, Flanagan has by times been more explicit about plans to ‘reform’ Canada as we know it. He makes perfectly clear his contempt for what he considers ‘the prevailing Aboriginal orthodoxy’ based, so he argued in *First Nations? Second Thoughts, on racism on the part of Aboriginal people and those in solidarity with them*.⁹⁰ In fact, the very idea of Indigenous rights is foreign to Flanagan’s version of ‘liberal’ democracy. How foreign *racism* is to ‘liberal democracy’ is of course debatable; some who call themselves liberal are, when not racist, certainly highly ethnocentric – Senator Dawes, for example, and those who enforced Allotment. In practice, is ethnocentrism much less dangerous than ‘plain racism?’ The horror of the Canadian residential school system suggests otherwise.

What Flanagan fails to see is that the ‘point’ of Aboriginal rights is not ‘race’ (itself a false construct). Rather, ‘Indians’ are people who Indian communities recognize as their relatives. Being ‘legally Indian,’ by contrast, involves an historically-conditioned tri-partite relationship amongst stake-holders of vastly unequal power – individuals, band coun-

cils set up on the Department of Indian Affairs model, and the federal government.⁹¹ It being beyond the scope of this paper to deal properly with ‘race’ and Indigenous rights, readers are referred to Gloria Valencia-Webber’s article “Racial Equality: Old and New Strains and American Indians.”⁹²

In Canada there are many people who—due to the vagaries of the *Indian Act*, present as well as past—bear the weight of being ‘Indians’ without the ‘status.’ As of 1991 they numbered around 250,000, a figure that was then in the process of decreasing as approximately 120,000 ‘C-31s’—three-quarters of them women—reclaimed Indian status following the 1985 amendment of the *Indian Act*. This decrease had to be temporary because many have very limited ability to pass Indian status on to their descendants.⁹³ In 1992, research produced by Stewart Clatworthy and Anthony H. Smith suggested that the number of status Indians will gradually drop and some Reserves go ‘extinct’ for lack of people qualified—under the *Indian Act*, sometimes combined with restrictive band membership codes—to live on them.⁹⁴ Reserves are also depopulating due to conditions of un-liveability, including the lack of safe water-supplies. As well as out-migration to regional centres and major cities, this means early death by suicide and addiction to drugs including alcohol and (beginning in the mid-‘90s) the prescription pain-killer OxyContin. It also means fetal alcohol syndrome and disproportionately high rates of HIV-positivity and AIDs.

How convenient is this concatenation of factors for the civilizationist-assimilationist project. Its advocates seem never happier than when referring to Friederich August von Hayek (1899-1992) to assert “The market is a process for bringing together knowledge dispersed among individual human beings.”⁹⁵ Given how thoroughly ‘The market’ is dispossessing the world’s Indigenous peoples, this reads as a bad joke. In 1975, as the new leader of British Conservatives, Margaret Thatcher banged-down on the conference table a copy of von Hayek’s *The Constitution of Liberty* (1960) and announced “*This* is what we believe.”⁹⁶ Et nous autres? No, Tom Flanagan and Stephen Harper, we do not. “One does not sell the land on which the people walk.”⁹⁷ There are ‘Market’ as well as spiritual reasons for this. Canadian city streets are haunted by the already dispossessed.

Notes

1. *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon, 1984), 37.
2. *Report of the Royal Commission on Aboriginal Peoples* (Ottawa:

- Minister of Supply and Services, 5 vols., 1996), 5, 175, Recommendation 2.4.2.
3. See Eric Guimond et al., "Charting the Growth of Canada's Aboriginal Populations: Problems, Options and Implications," presented at a Population Association of America meeting, Minneapolis, 2003, 3-6. While the legal, political, and economic consequences of who 'qualifies' are heavy, "the existential and cultural stakes are less readily described, but far more important"; John Sledd, "Events Leading to the American Indian Probate Reform Act of 2004 (AIPRA)," presented at a University of Wisconsin Land Tenure Seminar, 2005, 17.
 4. By contrast, Aboriginal people in the U.S. make up only 0.8 percent of the population while Reservations cover 4 percent of the land; Robert White-Harvey, "Reservation Geography and the Restoration of Native Self-Government," *Dalhousie Law Journal* 17:2 (1994), 587 n.1 and 588. This does not, of course, necessarily correlate with any greater 'generosity of spirit' on the part of the dominant society in the U.S. compared to in Canada.
 5. "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession," *Canadian Journal of Native Studies* XXIII:2 (2003), 391-424.
 6. Note his contribution to *Waking Up To Dreamtime: The Illusions of Aboriginal Self-Determination*, Gary Johns, ed. (Singapore: Media Masters, 2001).
 7. (Montreal & Kingston: McGill-Queen's University Press, 2007).
 8. The others are customary rights, leases (some on CP land, some not), and arrangements according to codes developed under the 1999 *First Nations Land Management Act*.
 9. Their ideological parents, now in power in the U.S., are more accurately described as neo-fascists.
 10. The document, by Tanis Fiss, is available at [www.taxpayer.ca/pdf/Road to Prosperity September 2005.pdf](http://www.taxpayer.ca/pdf/Road_to_Prosperty_September_2005.pdf)
 11. Tom Flanagan, *First Nations? Second Thoughts* (Kingston: McGill-Queen's University Press, 2000), 193.
 12. For a case-study from Treaty 9 territory see my "'White Gold' versus Aboriginal Rights: A Longlac Ojibwa Claim against Damages caused by the 1937 Diversion of the Kenogami River into Lake Superior," *Blockades and Resistance: Studies of Actions of Peace and the Temagami Blockades of 1988-89*, Bruce Hodgins, et al., eds. (Waterloo: Wilfrid Laurier University Press, 2003), Chapter 10.
 13. For an interesting and detailed discussion of Haudenosaunee/Iroquois, Inuit, and numerous other Turtle Island land-tenure systems pre-European invasion see Section III of K.H. Bobroff's "Retell-

- ing Allotment: Indian Property Rights and the Myth of Common Ownership," *Vanderbilt Law Review* 54:4 (2001), 1571-94.
14. Alcantara, "Individual Property Rights," 391.
 15. Alcantara, "Individual Property Rights," 404.
 16. In this regard, in terms of the first modern treaty, see Paul Rynard, "Ally or Colonizer? The Federal State, the Cree Nation and the James Bay Agreement," *Journal of Canadian Studies* 36:2 (2001).
 17. R. Pipes, *Property and Freedom* (1999), ponderously sub-titled "The Story of How Through the Centuries Private Ownership Has Promoted Liberty and the Rule of Law"; H. De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Elsewhere* (2000). To say it 'fails elsewhere' is inaccurate; now, as ever, it works well to enrich some at the expense of the rest.
 18. Alcantara, "Individual Property Rights," 392 and 396.
 19. Don Grinde Jr., "Native American Slavery in the Southern Colonies," *Indian Historian* 10:2 (1977), 38-42. This historically important journal, which was published between 1964 and 1980, is gradually being put on-line at www.americanindian.ucr.edu/references/historian/index.html
 20. K. Squadrito, "Locke and the Dispossession of the American Indian," *American Indian Culture and Research Journal* 20:4 (1996), 147.
 21. Wayne Glausser, "Three Approaches to Locke and the Slave Trade," *Journal of the History of Ideas* 51:2 (1990), 200-01.
 22. Paul Stuart, *Nations Within a Nation: Historical Statistics of American Indians* (New York: Greenwood, 1987), 30, Table 2.16.
 23. T. Flanagan and C. Alcantara, "Individual Property Rights on Canadian Indian Reserves," which appeared in a special 'Against the Flow' (*sic!*) issue of the *Queen's Law Journal* 29:2 (2004), 520 n.164. This was a re-jigging of their 2002 Frazer Institute paper of the same name.
 24. Flanagan and Alcantara, "Individual Property Rights on Canadian Indian Reserves," 493.
 25. See C.A. Karns, "County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation: State Taxation as a Means of Diminishing the Tribal Land Base," *American University Law Review* 42:3 (1993).
 26. Bobroff, "Retelling Allotment," 1596-98 and 1573 n. 51.
 27. Terry Lee Anderson, ed., *Property Rights and Indian Economies* (Lanham MD: Rowman & Littlefield, 1992).
 28. L.A. Carlson, *Indians, Bureaucrats and the Land: The Dawes Act and the Decline of Indian Farming* (Westport CT: Greenwood, 1981).
 29. Ch. 119, 24 Stat. 388, easily available from the California State University at San Marco's Native American Documents Project;

- www.csusm.edu/nadp/a1887.htm
30. Bobroff, "Retelling Allotment," 1565.
 31. Carl Hakansson, "Allotment at Pine Ridge Reservation: Its Consequences and Alternative Remedies," *North Dakota Law Review* 73:2 (1997), 232.
 32. David Holford, "The Subversion of the Indian Land Allotment System, 1887-1934," *Indian Historian* 8:1 (1975), 18.
 33. L.B. Priest, *Uncle Sam's Step-children: The Reformation of U.S. Indian Policy, 1865-87* (New York: Octagon, 1973), 246-47.
 34. Paul W. Gates, "Indian Allotments Preceding the Dawes Act," *The Frontier Challenge: Responses to the Trans-Mississippi West*, J.G. Clark, ed. (Lawrence: University Press of Kansas, 1971), 142.
 35. What may be called 'small-r removal' was also practiced in the north, northwest, and west such that "By the close of the nineteenth century, more than one hundred tribes, bands, and clans of Indians had been removed to Oklahoma"; "Removal," *Encyclopedia of North American Indians*, F.E. Hoxie, ed. (Boston: Houghton Mifflin, 1996), 543.
 36. Some, amongst the Cherokees in particular, became so 'civilized' that they acquired plantations and the African enslaved labour without which large landholdings were commercially useless; see Melinda Micco, "African Americans and American Indians," *Encyclopedia of North American Indians*, 5-7.
 37. "Trail of Tears," *Encyclopedia of North American Indians*, 639-40.
 38. Mary Elizabeth Young, "Indian Removal and Land Allotment: The Civilized Tribes and Jacksonian Justice," *American Historical Review* 64:1 (1958), 45.
 39. Bobroff, "Retelling Allotment," 1605. The number of treaties, 1778-1871, was approximately 400.
 40. U.S. Supreme Court, *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), 187; www.justia.us/us/187/552/case.html
 41. U.S. Institute for Government Research, *The Problem of Indian Administration*, Lewis Meriam, Technical Director (Baltimore: Johns Hopkins University Press, 1928), 470.
 42. See Russell Thornton, *American Indian Holocaust and Survival: A Population History since 1492* (Norman: University of Oklahoma Press, 1987), Chapter 5: Decline to Nadir.
 43. Holly YoungBear-Tibbets, "Without Due Process: The Alienation of Individual Trust Allotments of the White Earth Anishinaabeg," *American Indian Culture and Research Journal* 15:2 (1991), 102.
 44. Quoted by Bobroff, "Retelling Allotment," 1606.
 45. Lawrence Kelly, "U.S. Indian Policies, 1900-80," *Handbook of North*

- American Indians: History of Indian-White Relations* [Vol. 4], W. Washburn, ed. (Washington DC: Smithsonian Institution, 1988), 66, and Bobroff, "Retelling Allotment," 1609-10.
46. Stuart, *Nations Within a Nation*, 31, Table 2.17.
 47. Holford, "Subversion," 14-15, 19.
 48. Sledd, "Events Leading to the AIPRA," 2. The fact that many settlers were cannon-fodder in the continuous re-construction of white supremacy is beyond the scope of this paper. See Alexander Saxton, *The Rise and Fall of the White Republic* (London: Verso, 1991).
 49. Figure 1 uses statistics provided by or extrapolated from Kelly's "U.S. Indian Policies," 67.
 50. See David Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University Press of Kansas, 1995).
 51. Janet McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington: Indiana University Press, 1991), 22, and Bobroff, "Retelling Allotment," 1605.
 52. E.J. Gay, *With the Nez Perces: Alice Fletcher in the Field, 1889-92* (Lincoln: University of Nebraska Press, 1981), 24.
 53. U.S. Supreme Court, *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), 187; www.justia.us/us/187/552/case.html
 54. In 1857, in the case *Dred Scott v. Sandford*, John Taney, Chief Justice of the U.S. Supreme Court, ruled that African-Americans could never be citizens and were thus not qualified to bring such actions as slave Dred Scott had brought for his freedom. Taney emphasized that African-Americans had "no rights which the white man was bound to respect"; www.gilderlehrman.org/collection/online/scott/index.html
 55. Sidney Haring, "Crazy Snake and the Creek Struggle for Sovereignty: The Native American Legal Culture and American Law," *American Journal of Legal History* 34:4 (1998), 365-80.
 56. Kenneth W. McIntosh, "Chitto Harjo (1846-1909?)," *Encyclopedia of North American Indians*, 231-34. McIntosh explains that Harjo means 'snake,' Chitto 'brave beyond discretion.'
 57. As quoted by Bobroff, "Retelling Allotment," 1569.
 58. See Gertrude (Zitkala-ša) Bonnin et al., *Oklahoma's Poor Rich Indians: An Orgy of Graft and Exploitation of the Five Civilized Tribes – Legalized Robbery* (Philadelphia: Indian Rights Association, 1924).
 59. Figure 2 derives from statistics given by Holford, "Subversion," 15, and Kelly, "U.S. Indian Policies," 66.
 60. Holford, "Subversion," 18.
 61. Alice Littlefield and M. Knack, eds. *Native Americans and Wage Labor:*

- Ethnohistorical Perspectives* (Norman: University of Oklahoma Press, 1996), 16-17.
62. Although this may not seem to have been over-whelming, many communities deemed Reservations were/are so small (eg. rancherias in California) that allotment—if not already accomplished—was impossible. For a useful summary see James Riding In, “Reservations,” *Encyclopedia of North American Indians*, 548.
 63. Carlson, *Indians, Bureaucrats and the Land*, 185-86, Table A.4.
 64. Sledd, “Events Leading to the AIPRA,” 4.
 65. Ironically, given their very different personalities, Collier - like Canada’s long-time Deputy-Superintendent of Indian Affairs Duncan Campbell Scott - was also a poet; E. Palmer Patterson, “The Poet and the Indian: Indian Themes in the Poetry of D.C. Scott and John Collier,” *Ontario History* LIX:2 (1967), 69-78.
 66. *American Indian Culture and Research Journal* 10:2 (1986), 32. Clemmer quotes Oliver La Farge, who was involved in the process, that for the Hopi people “The idea that members of the government should do anything for them for idealistic reasons is impossible to receive.”
 67. “Termination,” *Encyclopedia of North American Indians*, 625. Note an *Indian Culture and Research Journal* special issue on urban Indians: 22:4 (1998).
 68. Leonard Peltier, “War Against the American Nation,” *It Did Happen Here: Recollections of Political Repression in America*, B. and R. Schultz, eds. (Berkeley: University of California Press, 1989), 213-29.
 69. The next-ranking states in terms of Section IV Allotment, again as of 1914, were Montana and New Mexico; Stuart, *Nations Within a Nation*, 23, Table 2.9. He also gave figures for other years between 1912 and 1953, but without the states involved being mentioned, 18, Table 2.4.
 70. W. E. Coffey, “Genocide of the California Indians with a Comparative Study of Other Minorities,” *Indian Historian* 10:2 (1977), 8-15; E.D. Castillo, “A Short Overview of California Indian History” (1998); www.ceres.ca.gov/nahc/califindian.html
 71. Michael Lawson, “How the BIA Discourages Historical Research,” *Indian Historian* 10:4 (1977), 25-27.
 72. Until recently the Department of the Interior used 67 different systems for trust-title records and nearly a third of BIA offices still relied on three-by-five ‘Allotment and Estate’ cards; Sledd, “Events Leading to the AIPRA,” 2 and 16 n.8.
 73. Terry Lee Anderson and D. Lueck, “Agricultural Development and

Land Tenure in Indian Country,” *Property Rights and Indian Economies*, 150-51, Table 8.2. Neither their *Journal of Law & Economics* article (also 1992) nor Anderson’s *Sovereign Nations or Reservations?* (1995) represented any improvement, the book using exactly the same table as appeared in the 1992 book chapter.

74. Stuart, *Nations Within a Nation*, 19, Table 2.5.
75. Stuart, *Nations Within a Nation*, 24-29, Tables 2.10 to 2.15. Unfortunately, he did not break down the information on a Reservation-by-Reservation basis.
76. Figure 3 is based on Stuart, *Nations Within a Nation*, 19, Table 2.5.
77. Four Reservations (Cherokee NC, Red Lake MN, Menominee WI, Fort Apache AZ) are excluded from consideration since they managed to avoid allotment throughout. Although the Menominee nation was ‘Terminated’ in the 1950s, its people succeeded in their struggle for ‘re-tribalization’ and restoration of most of their land, i.e., 231,680 acres in 1920, none in 1974, 222,552 by 1983.
78. Figure 4 is derived from Stuart, *Nations Within a Nation*, 31-33, Tables 2.17 to 2.19.
79. One of these was the Deneh/Navajo nation, where allotment rose from 328,963 acres in 1920 to 711,540 in 1983, a small proportion of its total 15.58 million acre land-base. We can speculate that, in this context, allotment-ownership was and is a safer proposition than on smaller Reservations with easier environments.
80. Stuart, *Nations Within a Nation*, 31-33, Tables 2.17 to 2.19.
81. Un-represented Nations and Peoples Organization, “Lakota: The Forgotten People of Pine Ridge”; www.unpo.org
82. Sledd, “Events Leading to the AIPRA,” 6.
83. Melissa Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920* (Lincoln: University of Nebraska Press, 1994), 229-31.
84. Hakansson, “Allotment at Pine Ridge Reservation,” 252.
85. See David L. Henry, *Stealing From Indians: Inside the BIA – An Exposé of Corruption, Massive Fraud, and Justice Denied* (Billings, Montana: Thunder Mountain Press, 1994).
86. V. Taliman, “Standing Strong: Elouise Cobell’s Seige of Interior,” *Native Americas* XVIII:3&4 (2001), 52-55; Brian Brasel-Awehali and Silja Talvi, “The BIA Multi-Billion Dollar Shell Game,” *Z Magazine* 15:4 (2002), 40-46; Bruce E. Johansen, “The Trust Fund Mess,” *Native Americas* XXI:3 (2004), 26-33.
87. Bobroff, “Retelling Allotment,” 1563.
88. Alcantara, “Individual Property Rights,” 400.
89. Flanagan and Alcantara, “Individual Property Rights on Canadian

- Indian Reserves,” 531.
90. According to Flanagan, “at bottom, the assertion of an inherent right of Aboriginal self-government is a kind of racism”; *First Nations? Second Thoughts*, 25.
 91. Explained, in the U.S. context, by Sledd, “Events Leading to the AIPRA,” 10 and 18.
 92. *Notre Dame Law Review* 80:1 (2004), 333-75.
 93. See John Giokas and R.K. Groves, “Collective and Individual Recognition in Canada: The *Indian Act* Regime,” *Who Are Canada’s Aboriginal Peoples?*, Paul L.A.H. Chartrand, ed. (Saskatoon: Purich Publishing, 2003), Chapter 2.
 94. Clatworthy subsequently toned-down this aspect of their findings. At an October 2005 Institute on Governance ‘Roundtable on Citizenship and Membership Issues’ he suggested that before such ‘extinguishment’ of Reserves occurs, court cases or other pressures will act to prevent it.
 95. Flanagan and Alcantara, “Individual Property Rights on Canadian Indian Reserves,” 529. This is their gloss of von Hayek’s “The Use of Knowledge in Society,” *American Economic Review* XXXV:4 (1945), 519-60.
 96. John Ranelagh, *Thatcher’s People: An Insiders Account of the Politics, the Power, and the Personalities* (London: HarperCollins, 1991), ix. Von Hayek dedicated the book “To the unknown civilization that is growing in America.”
 97. Attributed to Oglala-Brulé Chief Tashunka Witko (c.1840-1877), his name usually inaccurately translated as ‘Crazy Horse.’

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