8

Allotment and Assimilation

The United States' effort to exterminate tribal existence peaked in the late 1800s. Tribes were viewed as obstacles to American greatness. Hence, most Americans of the era believed "[t]he only good Indian is a dead Indian."[1] On the floor of the House of Representatives in 1868, Montana Congressman James Michael Cavanaugh chastised a New England representative for his pro-Indian sentiments, declaring: "The gentleman from Massachusetts may denounce the sentiment as atrocious, but I will say that I like an Indian better dead than living. I have never in my life seen a good Indian (and I have seen thousands) except when I have seen a dead Indian."[2] Cavanaugh condemned New Englanders as naïve for hoping to assimilate Indians. Cavanaugh stated, "I believe in a policy that exterminates the Indians, drives them outside the boundaries of civilization, because you cannot civilize them."[3] Notwithstanding Cavanaugh's warning, Congress adopted a policy of Indian assimilation, which meant the destruction of tribal culture, dispossession of tribal land, and removal of Indian children.

[1] Richard Drinnon, Facing West: The Metaphysics of Indian-Hating & Empire-Building 539 (1997); Wolfgang Mieder, *The Only Good Indian Is a Dead Indian: History and the Meaning of a Proverbial Stereotype*, 106 J. Am. Folklore 38, 42 (1976).

[2] Cong. Globe, 40th Cong., 2d Sess. 2638 (1868); Gayatri Devi, *Mainstreaming Racial Slurs: White Nationalism Comes Home to Roost*, N.D.Q. (June 1, 2020), https://ndquarterly.org/2020/06/01/mainstreaming-racial-slurs-white-nationalism-comes-home-to-roost/ [https://perma.cc/N24X-SG3T].

[3] Cong. Globe, 40th Cong., 2d Sess. 2638 (1868).

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8.1 THE GENERAL ALLOTMENT ACT

Congress' newly sanctioned extraconstitutional power over Indian tribes was immediately used to break up reservations. White frontiersmen had long yearned for tribal lands,[4] but tribal lands were secured by treaties. Though the United States was obligated by treaties to secure reservation lands against white intruders, the United States lacked the political will to enforce this treaty guarantee. Even if the United States was eager to honor its duty to protect reservation borders, it is not clear it could have. Heaps of white settlers were racing west in search of land and a better life. The white settlers' actions were in perfect harmony with Manifest Destiny.[5] Hence, reservations were becoming an obstacle to the United States' expansionist goals.[6]

American invasion of tribal land caused immense hardships for tribes, and easterners had taken an interest in Indian plight. These self-proclaimed "Friends of the Indian" were Christians who had usually never met an Indian, much less actually visited a reservation. Since the members of the group had little personal familiarity with Indians, they relied on stereotypes. Consequently, Friends of the Indian erroneously assumed Indians were all communists who did not acknowledge private property rights. The absence of private property was the culprit of reservation poverty and hopelessness according to the Friends of the Indian, as well as many others.[7]

Friends of the Indian sought to transform Indians from their "savage", tribal state into yeoman American farmers through the magic of private property.[8] Hence, the Friends of the Indian sought to convert reservations from tribal lands into individually owned parcels subject to the laws of the surrounding state. Liquidating the tribal land base would hasten the abolition of tribal laws and customs. On privately owned land, Indians would be compelled to farm, and adopting agriculture was key to abolishing Indian culture. As one federal Indian agent declared, "[T]he common field is the seat of barbarism; the separate farm the door to civilization."[9] An added benefit of converting reservations into private

[4] David H. Getches et al., Cases and Materials on Federal Indian Law 197 (7th ed. 2016).
[5] Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 Vand. L. Rev. 1559, 1568 (2001).
[6] Getches et al., *supra* note 4, at 194.
[7] Bobroff, *supra* note 5, at 1567.
[8] *Id.* at 1565.
[9] *Id.* at 1567.

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property would be reduced federal expenses as Indians would become self-sufficient.[10] Friends of the Indian viewed privatizing reservations and abandoning tribal ways as the Indians' only chance of holding on to their lands in the face of white, westward expansion.[11]

The interests of the land-hungry westerners and pro-Indian easterners aligned, albeit in an ethnocentric manner.[12] This paved the way for allotment legislation – breaking reservation lands into parcels of private property. One member of Congress in 1886 went so far as to state, "It has … the endorsement of the Indian rights associations throughout the country, and of the best sentiment of the land."[13] However, not everyone in Congress believed privatizing reservations would benefit Indians. Senator Henry Teller, the former Secretary of the Interior responsible for Courts of Indian Offenses, described the bill designed to privatize reservations as "a bill to despoil the Indians of their lands and make them vagabonds on the face of the earth."[14] Likewise, a minority report from the House Committee on Indian Affairs made the following assessment of reservation privatization efforts in 1880:

> The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indians are but the pretext to get at the lands and occupy them …. If this were done in the name of greed it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves whether he will or not is infinitely worse.[15]

No one bothered to get the tribal perspective on allotment.

Had tribes been consulted, Americans would have learned that tribes opposed allotment. Cherokee Nation Principal Chief D.W. Bushyhead explained the idea underlying allotment – Indians lack private property – was false, asserting: "The statements made to you that we, or any of the Indians, are communists and hold property in common are entirely erroneous. No people are more jealous of the personal right to property than Indians."[16] In fact, all tribes, including even nomadic tribes, recognized private property rights in land.[17] Allotment's other underlying

[10] Getches et al., *supra* note 4, at 196.
[11] *Id.*
[12] *Id.* at 195.
[13] *Id.*
[14] *Id.* at 197.
[15] *Id.*
[16] Bobroff, *supra* note 5, at 1571.
[17] *Id.* at 1573.

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assumptions, that all tribes are nomadic and nonagricultural, were also misguided as many tribes had long traditions of farming. Moreover, some tribes used their equestrian skills to become successful ranchers on reservations.[18] Tribes opposed allotment because they knew losing land meant losing sovereignty and their ability to exist as separate governments. Tribes also scoffed at the arrogance of the United States *giving* their citizens lands that already belonged to the tribes.

Proponents of privatization prevailed in 1887 when the General Allotment Act (GAA), often referred to as the Dawes Act for its author and lead advocate Senator Henry Dawes of Massachusetts, was enacted. The GAA divided reservations into 160-acre parcels for each Indian head of household, 80-acre parcels for single people over eighteen years of age, and 40 acres for minor orphans. The parcels allotted to Indians were placed in trust by the United States for a twenty-five-year period. While the land was held in trust, it was exempt from state taxes as well as other encumbrances.[19] When the trust period concluded, Indians were to become self-supporting farmers, so farm implements were guaranteed to Indians as part of allotment. United States citizenship would be bestowed upon allottees at the end of the trust period. Indian lands became alienable and subject to state jurisdiction at the conclusion of the trust period. Significantly, lands remaining after Indians received their allotments were deemed "surplus." The surplus lands could only be taken from tribal control with tribal consent.[20]

8.2 TRIBAL CONSENT NOT NEEDED

Allotment proceeded from reservation to reservation rather than en masse – reservations with high-quality farmland or resource endowments, like gold, were allotted before reservations with lower commercial value.[21] The United States issued individual Indians their allotments with

[18] Judith V. Royster, *Water, Legal Rights, and Actual Consequences: The Story of* Winters v. United States, *in* INDIAN LAW STORIES 81, 86 (Carole Goldberg et al., 2011); Edward E. Barry, Jr., *From Buffalo to Beef: Assimilation on Fort Belknap Reservation*, MONT.: MAG. OF W. HIST., Winter 1976, at 38.

[19] GETCHES ET AL., *supra* note 4, at 195.

[20] General Allotment Act of Feb. 8, 1887, Pub. L. No. 49–105, ch. 119, § 5, 24 Stat. 388, 389–90 *repealed by* Indian Land Consolidation Act Amendments of 2000, Pub. L. No. 106–462, 114 Stat. 1991 (codified as amended at 25 U.S.C. §§ 2201–2221 (2024)); Judith Royster, *The Legacy of Allotment*, 27 ARIZ. ST. L.J. 1, 13 n.63 (1995).

[21] Bobroff, *supra* note 5, at 1609; *c.f.* Christian Dippel, *Forced Coexistence and Economic Development: Evidence from Native American Reservations*, 82 ECONOMETRIC SOC'Y 2131, 2141 (2014).

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little trouble as Indians were required to take allotments.[22] Surplus lands were another matter. Some tribes were able to negotiate a price for their surplus lands with the United States, but many tribes held out. Some tribes categorically refused to sell, yet others wanted more money for their land than the United States was willing to pay.[23] This prevented the United States from opening millions of acres of tribal lands to white settlement. Therefore, the United States resorted to subterfuge during negotiations, and the United States' effort to allot the Kiowa, Comanche, and Apache (KCA) Reservation epitomized the federal government's malfeasance.

The United States sent a commission under David Jerome to negotiate the cession of KCA surplus lands in 1892.[24] Each of the tribes opposed selling their surplus lands.[25] Jerome responded by reminding tribes that their treaty-guaranteed annuities expired in 1898 and promised the KCA a bleak future if their surplus lands were not relinquished.[26] Seeing the writing on the wall, Comanche Chief Quannah Parker actively negotiated for the highest possible price for the KCA lands.[27] Parker was half Indian and half white. A pragmatist, Parker accepted what he believed to be the benefits of white society while holding on to the Comanche traditions he valued.[28] His outlook enabled him to become an extremely successful businessman. He used his wealth to aid the downtrodden, including feeding hungry Indians and fostering homeless white children.[29] Parker hired an attorney to represent the KCA during the allotment negotiation. Ultimately, Parker was able to increase the sales price by $500,000.[30] Due to this amendment, Parker and other tribal leaders endorsed the agreement. The KCA men then consented to the allotment as required by their treaty.[31]

However, suspicions were quickly raised among the KCA. The KCA discovered they were given a fraudulent translation of the allotment

[22] General Allotment Act, *supra* note 20, at § 2.
[23] Royster, *Legacy*, *supra* note 20, at 13 n.64.
[24] Angela R. Riley, *The Apex of Congress' Plenary Power Over Indian Affairs: The Story of* Lone Wolf v. Hitchcock, *in* Indian Law Stories 189, 202 (Carole Goldberg et al. eds., 2011).
[25] *Id.* at 203.
[26] Getches et al., *supra* note 4, at 206.
[27] *Id.*
[28] *Quanah Parker*, U.S. Nat'l Park Serv., www.nps.gov/people/quanah-parker.htm [https://perma.cc/CU7W-72YX].
[29] *Id.*
[30] Getches et al., *supra* note 4, at 208.
[31] *Id.*

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document.[32] The KCA leadership traveled to Washington, DC to protest the agreement. Congress and the Commissioner of Indian Affairs both acknowledged the KCA's opposition to allotment.[33] Fraud aside, the KCA noted the Treaty of Medicine Lodge required that three-quarters of the KCA men agree to any land cessions, and Jerome failed to meet this threshold.[34] Tribes fought ratification of the agreement diligently for eight years, but Congress approved it in 1900.[35] Following ratification, Parker accepted the KCA's fate and sought to make the best of allotment.[36] However, Lone Wolf fought on.

Lone Wolf was principal chief of the Kiowa.[37] Unlike Parker, Lone Wolf was a staunch traditionalist. He and his followers refused government handouts and many other things associated with whites.[38] Thanks to financial backing from the Indian Rights Association as well as the cattlemen who had been leasing the KCA lands, Lone Wolf hired an attorney and filed a federal court action challenging the agreement in June of 1901.[39] Lone Wolf's arguments were simple: The agreement was a product of fraud and was not signed by three-quarters of the KCA men.[40] Rather than addressing the merits of Lone Wolf's claims, the district court ruled for the United States because Indian tribes "are dependent wards of this nation in a state of pupilage, subject to the Control of Congress."[41] The federal court of appeals affirmed the district court in December of 1901.[42]

Two years later, the Supreme Court denied Lone Wolf's plea, asserting Lone Wolf's argument "ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear towards the government of the United States."[43] The Court explained Indians' dependent status granted Congress "paramount power over the property of the Indians."[44] Consequently, the Court believed no one ever questioned

[32] *Id.*
[33] *Id.*
[34] *Id.* at 210.
[35] Riley, *supra* note 24, at 207.
[36] *Id.*
[37] *Id.* at 208.
[38] *Id.* at 199.
[39] *Id.* at 208.
[40] *Id.* at 209.
[41] *Id.* at 214.
[42] *Id.* at 216.
[43] Lone Wolf v. Hitchcock, 187 U.S. 553, 564 (1903).
[44] *Id.* at 565.

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whether the United States possessed the power to lawfully, unilaterally abrogate treaties with tribes. While the Court acknowledged Lone Wolf's arguments may have merit, the Court held they were of no moment because congressional acts toward tribes are non-judiciable political questions. As a result, the Court said if Lone Wolf believed he had been wronged, he should appeal to Congress rather than the judiciary.[45]

The Court's decision, *Lone Wolf* v. *Hitchcock*, validated the United States' trampling tribal sovereignty. As Senator Matthew Quay declared soon after the Court issued its decision:

> [*Lone Wolf*] is a very remarkable decision. It is the Dred Scott decision No. 2, except that in this case the victim is red instead of black. It practically inculcates the doctrine that the red man has no rights which the white man is bound to respect, and that no treaty or contract made with him is binding. Is that not about it?[46]

Lone Wolf left tribes without any recourse against congressional malfeasance. And unrestrained by treaties – the supreme law of the land under the United States Constitution – Congress raced to open tribal surplus lands.[47] But even this evisceration of tribal treaty rights was not enough for land-hungry speculators.

8.3 ACCELERATING ALLOTMENT

Under the GAA, the federal government held individual Indians' land in trust for twenty-five years, and whites wanted Indian lands immediately. *Lone Wolf* gave Congress the power to respond to popular desire and pass the Burke Act of 1906.[48] The Act allowed the Secretary of the Interior to end the trust period and issue Indians fee patents upon being deemed "competent and capable of managing his or her affairs."[49] Competency determinations were usually made by the local reservation superintendent.[50] By 1910, the Commissioner of Indian Affairs began creating competency commissions with formalized

[45] *Id.* at 568.
[46] 36 CONG. REC. 2028 (1903) (statement of Sen. Matthew Quay, Pa.).
[47] Riley, *supra* note 24, at 224; Royster, *Legacy*, *supra* note 20, at 14.
[48] Burke Act of 1906, Pub. L. No. 59–149, ch. 2348, 34 Stat. 182 (codified as amended at 25 U.S.C. § 349 (2024)).
[49] 25 U.S.C. § 349 (2024).
[50] Bordeaux v. Hunt, 621 F. Supp. 637, 639 (D.S.D. 1985).

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procedures to determine an Indian's competency.[51] In 1917, the Office of Indian Affairs further loosened the trust restraints on allotments by adopting a policy racializing the definition of "Indian." The 1917 policy declared:

> To all able-bodied adult Indians of less than one-half Indian blood, there will be given as far as may be under the law full and complete control of all their property. Patents in fee shall be issued to all adult Indians of one-half or more Indian blood who may, after careful investigation, be found competent …[52]

At the trust period's conclusion, tribes were supposed to vanish.

The loss of trust status subjected Indians to myriad abuses. Many Indians could not speak English and lost their land through fraudulent transactions.[53] Some Indians were kidnapped by whites and forced to sign over their allotments.[54] Others lost their land through state tax sales as they were not provided with the necessary farm tools or seeds to make their land productive.[55] Through the issuance of fee patents, 90 percent of Indians were stripped of their land and cast into dire poverty.[56] Allotment caused immense harm to many Indians.

Allotment was also calamitous for tribes. Tribes held 138 million acres when the GAA was passed. By 1934, tribal landholdings fell to forty-eight million acres. Diminished land bases made it more difficult for tribes to maintain their cultures and governments. President Theodore Roosevelt was pleased with allotment's destructive effects on tribal governments, declaring: "The General Allotment Act is a mighty pulverizing engine to break up the tribal mass …. The Indian should be treated as an individual – like the white man."[57] Thus, according to President

[51] U.S. Dep't of the Interior, Rep. of the Comm'r of Indian Affs. to the Secretary of the Interior 48 (1910); Janet McDonnell, *Competency Commissions and Indian Land Policy, 1913–1920*, S.D. St. Hist. Soc'y, 1981, at 21, 22, www.sdhspress.com/journal/south-dakota-history-11-1/competency-commissions-and-indian-land-policy-1913-1920/vol-11-no-1-competency-commissions-and-indian-land-policy-1913-1920.pdf [https://perma.cc/N35L-JY5B].

[52] U.S. Dep't of the Interior, Rep. of the Comm'r of Indian Affs. to the Secretary of the Interior 4 (1917).

[53] Bobroff, *supra* note 5 at 1611; Royster, *Legacy*, *supra* note 20, at 12.

[54] Oklahoma v. Castro-Huerta, 597 U.S. 629, 688 (2022) (Gorsuch, J., dissenting).

[55] Getches et al., *supra* note 4, at 198; Bobroff, *supra* note 5, at 1611; Adam Crepelle, *Decolonizing Reservation Economies: Returning to Private Enterprise and Trade*, 12 J. Bus. Entrepreneurship & L. 413, 435–36 (2019); Royster, *Legacy*, *supra* note 20, at 12.

[56] Bobroff, *supra* note 5, at 1611.

[57] *Theodore Roosevelt, First Annual Message, Dec. 3, 1901*, Am. Presidency Project, www.presidency.ucsb.edu/documents/first-annual-message-16 [https://perma.cc/U3P3-JS6Z].

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Roosevelt, Friends of the Indian, and many others during the era, tribes should not exist as governments and Indians should assimilate.

8.4 THE LAST ARROW BUT STILL AN INDIAN

Race and culture were inextricably intertwined. Indian citizenship ceremonies evinced this. As Indians did not acquire United States citizenship by birth, they often obtained citizenship status later in life. At the end of an allotee's trust period, during the early 1900s, the United States devised the "Last Arrow Ceremony."[58] Indians first had to prove they were competent – which could be done by possessing less than one-half Indian blood – and acquiring fee-simple title to a piece of land, which usually occurred at the end of the allotment period. The United States used different ceremonies for men and women.

For men, the ceremony began when the federal agent asked the Indian: "What was your Indian name?" Upon receiving the answer, the federal agent handed the Indian, who was adorned in "traditional Indian" garb, a bow and ordered him to fire an arrow. The federal agent then stated:

> You have shot your last arrow. That means that you are no longer to live the life of an Indian. You are from this day forward to live the life of the white man. But you may keep that arrow, it will be to you a symbol of your noble race and of the pride you feel that you come from the first of all Americans.

The Indian then entered a teepee and switched into "white" clothes. Next, the Indian placed his hands upon a plow, and the federal agent said:

> This act means that you have chosen to live the life of the white man – and the white man lives by work. From the earth we all must get our living and the earth will not yield unless man pours upon it the sweat of his brow. Only by work do we gain a right to the land or to the enjoyment of life.

Following this, the agent declared:

> I give you a purse. This purse will always say to you that the money you gain from your labor must be wisely kept. The wise man saves his money so that when the sun does not smile and the grass does not grow, he will not starve.

[58] Trey Davenport, *Ritual on U.S. Citizenship for Select Lakota at Fort Yates in Standing Rock*, Trystan Found. (Mar. 23, 2017), www.trystan.foundation/2017/03/23/ritual-on-u-s-citizenship-for-select-lakota-at-fort-yates-in-standing-rock/ [https://perma.cc/MPS8-B6GR]; Jared Farmer, *Last Arrow Ceremony* (Oct. 16, 2016), https://jaredfarmer.net/curios/last-arrow-ceremony/ [https://perma.cc/9F93-SQB8]; Section 9: *Citizenship*, N.D. People Living on the Land, www.ndstudies.gov/gr8/content/unit-iii-waves-development-1861-1920/lesson-1-changing-landscapes/topic-4-reservation-boundaries/section-9-citizenship [https://perma.cc/8KV2-TCB4].

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I give into your hands the flag of your county. This is the only flag you have ever had or ever will have. It is the flag of freedom; the flag of free men, the flag of a hundred million free men and women of whom you are now one. That flag has a request to make of you, _____ (white name), that you take it into your hands and repeat these words:

"For as much as the President has said that I am worthy to be a citizen of the United States, I now promise to this flag that I will give my hands, my head, and my heart to the doing of all that will make me a true American citizen."

And now beneath this flag I place upon your breast the emblem of your citizenship. Wear this badge of honor always; and may the eagle that is on it never see you do aught of which the flag will not be proud.

The citizenship ceremony for Indian women reflected the United States' view of women during the era. Thus, for women, the agent stated:

Take in your hand this work bag and purse.

This means that you have chosen the life of the white woman – and the white woman loves her home. The family and the home are the foundation of our civilization. Upon the character and industry of the mother and homemaker largely depends the future of our Nation. The purse will always say to you that the money you gain from your labor must be wisely kept. The wise woman saves her money, so that when the sun does not smile and the grass does not grow, she and her children will not starve.

I give into your hands the flag of your country. This is the only flag you have ever had or ever will have. It is the flag of freedom, the flag of free men, a hundred million free men and women of whom you are now one. That flag has a request to make of you, _____ (white name), that you take it into your hands and repeat these words:

"For as much as the President has said that I am worthy to be a citizen of the United States, I now promise to this flag that I will give my hands, my head, and my heart to the doing of all that will make me a true American citizen."

And now beneath this flag I place upon your breast the emblem of your citizenship. Wear this badge of honor always, and may the eagle that is on it never see you do aught of which the flag will not be proud.[59]

Following the ceremony, Indians were to become equal to white United States citizens.

This was not the case as Indians were subject to extreme federal control even after acquiring citizenship. The Supreme Court declared in 1916: "Citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians or placing them beyond the reach of congressional regulations adopted for their protection."[60] Consequently, Indians who became

[59] Davenport, *supra* note 58; Farmer, *supra* note 58.
[60] United States v. Nice, 241 U.S. 591, 598 (1916).

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United States citizens remained subject to criminal laws designed specifically for Indians because they "remained Indians by race."[61] Hence, "full-blood Indians" could not alienate or encumber *their* land without first obtaining permission from the Secretary of the Interior.[62] This remained true no matter how peaceful and industrious they became. For example, the Supreme Court described the Pueblo Indians as "a peaceable, industrious, intelligent, honest, and virtuous people" in 1877.[63] Notwithstanding, the Supreme Court determined the Pueblos' status as citizens was irrelevant to Congress' assertion of plenary power over them in 1913 because they were racially Indians, which according to the Supreme Court meant "they are essentially a simple, uninformed and inferior people."[64]

8.5 INDIAN BOARDING SCHOOLS

Crucial to the United States' goal of destroying tribal governments was eradicating tribal culture, and the United States long sought to indoctrinate Indian children in white, Christian ways. As early as 1819, the United States administered a Civilization Fund that paid religious institutions to educate Indian children in white culture.[65] In 1860, the United States opened the first boarding school on an Indian reservation.[66] The first off reservation boarding school was established by Colonel Richard Pratt in Carlisle, Pennsylvania in 1879.[67] Pratt claimed off reservation boarding schools were needed because children could run away to their homes too easily while on reservation.[68] Pratt further averred removing children from tribal land would eliminate all Indigenous influences that may interfere with the assimilation process.[69]

[61] United States v. Celestine, 215 U.S. 278, 290 (1909).
[62] Tiger v. W. Inv. Co., 221 U.S. 286, 306 (1911).
[63] United States v. Joseph, 94 U.S. 614, 616 (1877).
[64] United States v. Sandoval, 231 U.S. 28, 39 (1913).
[65] Indian Civilization Act of 1819, ch. 85, 3 Stat. 516, 517; U.S. Dep't of the Interior, Federal Indian Boarding School Initiative Investigative Report 7 (2022).
[66] Melissa Mejia, *The U.S. History of Native American Boarding Schools*, Indigenous Found., www.theindigenousfoundation.org/articles/us-residential-schools [https://perma.cc/M8ZG-5L48].
[67] David Wallace Adams, Education for Extinction: American Indians and the Boarding School Experience, 1875–1928, at 54–56 (2020).
[68] Andrea Smith, U.N. Permanent Forum on Indigenous Issues, Indigenous Peoples and Boarding Schools: A Comparative Study 4 (2009), www.un.org/esa/socdev/unpfii/documents/IPS_Boarding_Schools.pdf [https://perma.cc/DZ8Q-23XQ].
[69] *Id.*; Adams, *supra* note 67, at 58.

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Pratt was a "Friend of the Indian" and believed boarding schools were the answer to the Indian problem. In an infamous speech, Pratt declared:

> A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.[70]

While Pratt's remarks seem harsh, kill or assimilate Indians was a serious policy debate during the latter half of the nineteenth century. Commissioner of Indian Affairs Carl Schurz declared Indians had "this stern alternative: extermination or civilization."[71] For economic reasons, the United States chose assimilation. Schurz estimated "it cost nearly a million dollars to kill an Indian in warfare, whereas it cost only $1,200 to give an Indian child eight years of schooling."[72] Secretary of the Interior Henry Teller estimated it would cost at least four times as much to fight tribes as to educate their children.[73] Thus, boarding schools became the United States' solution to the Indian problem.

The United States operated more than 400 boarding schools.[74] Some Indians freely sent their children to boarding schools. Others were distrustful of the federal government and would not relinquish their children to the United States. Indians who would not surrender their children had their rations withheld[75] and their children abducted by federal police.[76] One way or another, the federal government removed thousands of Indian children from their families and placed them in boarding schools.[77]

Life at boarding school was grim. Upon arrival, Indian children were bathed in kerosene,[78] given white names, forced to wear Anglo-American clothing, had their hair cut in *civilized* styles, and were forbidden from speaking their Indigenous language or practicing their native religion.[79]

[70] Richard H. Pratt, *The Advantages of Mingling Indians with Whites*, *in* Proceedings of the Nat'l Conf. of Charities and Correction at the Nineteenth Ann. Session Held in Denver, Colo., June 23–29, at 45, 46 (Isabel C. Barrows ed., 1892).

[71] Adams, *supra* note 67, at 18–19; Smith, *supra* note 68, at 4.

[72] Adams, *supra* note 67, at 23.

[73] *Id.*

[74] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 6.

[75] 25 U.S.C. § 283 (2018), repealed by RESPECT Act of 2022, Pub. L. No. 117–317, § 2(9), 136 Stat. 4419.

[76] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 29.

[77] *Id.* at 36.

[78] Mejia, *supra* note 66.

[79] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 53–54.

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Academics were given little attention.[80] Instead, federal Indian boarding schools emphasized industrial training, such as teaching boys skills like carpentry, shoemaking, and farming.[81] Indian girls were taught to cook, clean, and sew.[82] Boarding schools also loaned Indian children out to labor for white families.[83] A 1928 report to the federal government concluded, "The labor of [Indian] children as carried on in Indian boarding schools would, it is believed, constitute a violation of child labor laws in most states."[84]

Boarding schools were perilous places for Indian children. They died operating heavy machinery.[85] Malnutrition was common,[86] and children regularly died of starvation.[87] Hunger combined with inadequate medical care left children susceptible to all variety of ailments.[88] Children were punished for offenses, including speaking their native language, by whipping, flogging, and other corporal punishments, as well as solitary confinement.[89] Withholding food was also used to punish Indian youth.[90] Sexual abuse was rampant.[91] Hundreds of children died in boarding schools.[92] Many were buried in unmarked graves,[93] and some boarding schools concealed the bodies of deceased children in school walls.[94]

The deaths of Indian children were viewed as collateral damage in the United States' quest to destroy tribes. In 1902, the Commissioner of

[80] Adams, *supra* note 67, at 25–29; Jon Reyhner & Jeanne Eder, American Indian Education: A History 131 (2d ed. 2017); Smith, *supra* note 68, at 5; *Theodore Roosevelt, First Annual Message*, *supra* note 57.

[81] Rep. of the Secretary of the Interior: Being Part of the Message and Documents communicated to the Two Houses of Cong. VII (1884); Mejia, *supra* note 66.

[82] Mejia, *supra* note 66.

[83] Adams, *supra* note 67, at 58–59, 63; Smith, *supra* note 68, at 5.

[84] Lewis Meriam, The Inst. for Gov't Rsch., The Problem of Indian Administration 376 (1928).

[85] Smith, *supra* note 68, at 5–6.

[86] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 56.

[87] Smith, *supra* note 68, at 5.

[88] Mejia, *supra* note 66.

[89] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 8.

[90] *Id.* at 54.

[91] *Id.* at 56; Smith, *supra* note 68, at 6.

[92] Fed. Boarding Sch. Investigative Rep., *supra* note 65, at 9.

[93] *Id.* at 86. Eva Guggemos & SuAnn Reddick have undertaken research to document those who died at Chemawa Indian School, the "oldest, continuously operated boarding school," and to locate and identify unmarked graves. A detailed spreadsheet can be found at *Names & Burial Locations*, Deaths at Chemawa Indian School, https://heritage.lib.pacificu.edu/s/deaths-chemawa/page/names-burial-locations [https://perma.cc/6XF3-YSTJ].

[94] Smith, *supra* note 68, at 7.

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Indian Affairs declared the purpose of the boarding school system was to "educate the Indian is to prepare him for the abolishment of tribal relations, to take his land in severalty, and in the sweat of his brow and by the toil of his hands to carve out, as his white brother has done, a home for himself and family."[95] The Commissioner of Indian Affairs' 1910 Report to the Secretary of the Interior noted that teaching Indian children reading, writing, and arithmetic was not the goal of boarding schools but:

> The essential feature of the Government's great educational program for the Indians is the abolition of the old tribal relations and the treatment of every Indian as an individual. The basis of this individualization is the breaking up of tribal lands into allotments to the individuals of the tribe. This step is fundamental to the present Indian policy of the Government. Until their lands are allotted, the Government is merely marking time in dealing with any groups of Indians.[96]

Boarding schools were little more than a tool to destroy tribal governments and cultures.

✦✦✦

Allotment was a gross violation of federal law as it contravened tribal treaty rights. Allotment enabled the United States to "legally" strip tribes of ninety million acres of land. Furthermore, removing land from tribal control stymied tribes' ability to function as governments. Allotment also prevented Indians from acting as autonomous individuals by placing *their* land in federal trust status and compelling them to farm. But the loss of land was not as grave as the loss of their children. Not only were Indian families deprived of their children, but their children were indoctrinated to believe their Indigenous culture and government were contemptible. However, tribal institutions endured. Public policy briefly turned toward preserving tribal governments but soon reverted to terminating them.

[95] U.S. Dep't of the Interior, Rep. of the Comm'r of Indian Affairs 3 (1903).
[96] U.S. Dep't of the Interior, Rep. of the Comm'r of Indian Affairs 28 (1910).

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