

**Mixed Race, Legal Space:
Official Discourse, Indigeneity, and Racial Mixing in Canada, the US, and
Australia, 1850-1950**

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Abstract

It is commonly held that contradiction and ambivalence are typical of Aboriginal policies, particularly those of the late 19th and early 20th centuries. These contradictions, often witnessed between policy and its application, have been recognized as a competition between pragmatic factors and humanitarian concerns. However, as is evidenced by the ‘mix-race discourse’ of the laws and policies that make up Aboriginal policy in Canada, the US, and Australia, these contradictions can in part be explained by a post-Enlightenment science that debated the role and place of mixed-ancestry Natives. While mixed-ancestry Natives were the specific targets of law and policy that aimed to fix their identities in a ‘Native-Newcomer’ racial binary, officials were ambivalent and ambiguous when it came to how they fit into that binary. The question of whether they should be considered ‘Aboriginal’ and if they should therefore be assimilated or segregated remained one of the most enduring questions of Aboriginal policy in the century between 1850 and 1950.

This dissertation considers these contradictions and how the role of mixed-ancestry Natives in Aboriginal policies can explain them. Instead of seeing those contradictions as anomalies or as illogical, I posit that they are a logical product of scientific debates over racial hybridity. Fundamentally, I argue that mixed-ancestry Natives were the targets of ambivalent policies that were shaped by debates among nineteenth-century scientists about the implications of racial mixing. These debates were reflected in the inconsistencies and apparent contradictions of the laws and practices that make up Aboriginal policy in Canada, the US, and Australia. In particular, these debates were reflected in the ambiguity and ambivalence of policies that tried to direct how Indigenous peoples of mixed-ancestry should be dealt with, defined, and categorized. The contradictions and ambiguities in law and policy reflect on a larger scale the tension between attempting to apply a hypothetical dichotomized racial hierarchy on the reality of a

hybridized society. These tensions were a major influencing factor on the direction and development of Aboriginal policy in these three countries, and produced a consistent albeit ambivalent body of 'mixed-race' discourse.

Acknowledgement

This dissertation was conceived, written, and researched on the traditional lands of the many Indigenous groups of Australia, Canada, and the United States over which I travelled during the course of this dissertation. I first and foremost thank them for sharing their stories and opinions, and acknowledge their stake in the archival material and government records that constitute part of their histories and the sources of this dissertation.

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All work presented here is the sole responsibility of its author.

Dedication

The essential thing "in heaven and in earth" is...that there should be a
long OBEDIENCE in the same direction,
there thereby results, and has always resulted in the long run,
something which has made life worth living

Friedrich Nietzsche, *Beyond Good and Evil*

Cultural Warning and a Note on Terminology

This dissertation contains the names of deceased Aboriginal persons as well as quotes, references, and terminology that many Aboriginal people will consider offensive. These materials do not reflect the attitudes or views of the author, but rather, are included to maintain the integrity of the historical archive and illuminate the ideas of race that constituted the ideological basis of Aboriginal policies. The author intends no disrespect to those individuals, either living or deceased.

The author explicitly acknowledges the offensive and problematic nature of the terminology used to refer to those discussed in this work. Mixed-ancestry Natives are and were not a cohesive group in any of the three countries under consideration here; consequently, there is no single term that could properly and accurately designate them. However, writing about this topic requires one. I have chosen to use ‘mixed ancestry’ over ‘mixed race’ in most cases, but have also used ‘mixed-blood’ for the US and ‘Halfbreed’ for Canada. Where possible or necessary, I attempt to use the historically accurate term. There were rarely explicit and uniform usages and definitions in the historical record; however, some trends emerge for each country.

In Canada, the most common term for mixed-ancestry Natives referenced in government documents was ‘Halfbreed. This could refer either to those who belonged to a distinct cultural group, or individuals who were of mixed-ancestry but not part of a mixed-ancestry group. The term might be used to identify someone of mixed ancestry, even if they themselves identified as Indian. Métis, used less frequently, generally referred to those mixed-ancestry Natives with a specific group identity, and generally French-speaking, at Red River. However, only those officials more intimately acquainted with the Red River Métis made this distinction.

In Australia, the term ‘Half-caste’ was almost always used in government records. Particularly after the turn of the century, many officials became more cognizant of blood quantum, and more specific terms like ‘quadroon’ or ‘octoroon’ were introduced into official documentation. General terms in common usage in other parts of the world, namely, Aboriginal and Native, pose some challenges for Australia, where ‘Native’ referred to an Australian-born white person.¹

In the U.S., ‘mixed blood’ was the most common term found in government records. In some records, most notably census counts, a fractional blood quantum might also accompany the designation. But compared to Canada and Australia, there was a more consistent use of this single term without qualification, though as with ‘Halfbreed’ in Canada, the designation often came without consideration for that individual’s self-ascription. Culture, while not entirely dismissed, was rarely the first criterion in any of these three countries.

While I acknowledge the problems with the above terms, I have found no solution. Like many scholars who write critically about race, I am stuck with the quandary of risking the validation of false racial categories by evoking the language required to engage in their deconstruction.

¹ John Chesterman and Heather Douglas, “‘Their Ultimate Absorption’: Assimilation in 1930s Australia,” *Journal of Australian Studies* 81 (2004): 47–58.

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Chapter 1 - Introduction: Between Ambiguity and Ambivalence

*Half-breeds are neither white men nor Indians, as expressed in their name; and the proper treatment of them is neither defined in the regulations, nor, perhaps, established by usage. If it is said that they are not Indians, and must therefore be treated as white men, it may more plausibly be said they are not white men, and ought therefore to be treated as Indians, as they unquestionably have been in almost all treaties containing stipulations in their favor.*² C.A. Harris, US Congress, 1838

*It is only reasonable that the aborigines should be allowed to remain on their native soil and in their tribal districts in due security and comfort; but it appears to be equally reasonable and important that the younger half-castes should be withdrawn from their midst and gradually absorbed into the general community, young quadron and half-caste children who are without parents being first removed, with a view to being placed in an institution or boarded out.*³ 1883 NSW Legislative Assembly, Australia, Aboriginal Mission Stations at Warangesda and Maloga

*It has been represented to the Department that it is desirable that half-breeds who are able and willing to support themselves should be allowed to give up their treaty relations with the Government, and by taking away the annuity, as provided in the old Act, the Government considered it was a bar to enterprise, for the half-breed would not have the same inducement to becoming self-supporting if obliged to give up his annuity.*⁴ John A. Macdonald, Canada House of Commons, 1884

Ambivalence has always plagued Aboriginal policies, and nowhere was this more apparent than in failed and dubious attempts to divide Indigenous peoples by degrees of ‘blood. History is replete with examples of administrations claiming assimilation as its goal while it practiced the opposite: segregation, anti-miscegenation, apartheid, exclusion, ostracization, and discrimination. Policy makers were infamously ambivalent, and at times even apathetic towards Indigenous affairs. Such behaviour was emblematic of the seeming lack of logic and cohesion of those policies, especially when viewed over time. Indeed, this has become a bit of a running joke among historians.

These contradictions have traditionally been viewed as acceptable anomalies of Aboriginal Affairs and are rarely accorded attention as topics of inquiry unto themselves. The

² C.A. Harris, Congressional Serious Set 349, H.doc. 229, 28 February 1839.

³ 1883 NSW Legislative Assembly, Aboriginal Mission Stations at Warangesda and Maloga, 4.

⁴ J.A Macdonald, *House of Commons Debates*, 7 April 1884, 1400.

suggestion has been that illogical behaviour is typical of governments and even expected of administrations that have little time, money, or motivation to be overly concerned with Aboriginal matters. Their apparent inattention is a result of almost whimsical responses to ever-changing public demands, and ever-changing priorities in nations that had, between 1850 and 1950, far greater and more important matters of concern. Building railways, opening agricultural land, creating business opportunities, and attracting settlers, for instance, took precedence over what were seen as the more minor concerns of Aboriginal affairs unless or until those concerns threatened the peace or security of burgeoning nations and territorial expansion. Even governments with a clear vision for Aboriginal policy could not execute their plans because of the short lives they led. The turn-over of government administrations meant that there was never enough time to institute comprehensive policies that, according to their creators, took decades – even generations – to achieve their intended results. According to this perspective, then, Aboriginal policies were *ad hoc* constructions with little logic or explanation beyond fulfilling immediate and shifting needs. To find inconsistencies or ambiguities, especially where mixed-ancestry Natives are concerned, would seemingly merit little attention.

This is true in part, but it does not tell the complete story. Human action is shaped as much by ideological considerations as it is pragmatic concerns, and the two are more connected than we usually appreciate. Ideological concerns often express themselves in empirical matters, and broader ideas and worldviews are expressed in mundane, everyday kinds of ways. These usually occur implicitly and covertly, making them difficult to identify and separate, but they are there nonetheless. Such is also the case in law and policy: even though the contradictions of policies do indeed reflect the pragmatic concerns of policy makers, they also reflect the less tangible, often muddled ideological influences of the era. The archival records of Canada, the

US, and Australia suggest such a connection where scientific theories about race and human difference give meaning to that ambiguity and contradiction. Indeed, mixed-ancestry Natives were the ‘ambivalent targets’ of law and policy.⁵

Questioning Ambiguity

The apparent ambivalence in policies simultaneously raise a number of questions and expose the tensions of racial identity and the contradictory policies put in place to deal with them. Law posits identities like ‘Indian’ or ‘Aboriginal’ in clear-cut ways, but the lived realities of identity and belonging are ambiguous, contested, and malleable. The ways in which government officials applied those categories are equally ambiguous, contested, and malleable. But what does that ambiguity mean? How do larger ideas like race and colonialism situate that ambiguity? How do we explain the apparent inherent contradictions? How do we negotiate the seemingly contradictory words and actions of officials who oscillated between assimilating and segregating those individuals of mixed ancestry? What role did mixed-ancestry Natives play in that ambiguity, and thus, in Aboriginal policy?

The contradictions in policy and the ambivalence towards mixed-ancestry Natives are related matters. In fact, we can discover the rationale for the former in the latter. This dissertation explores these questions by considering the role that Indigenous peoples of mixed-ancestry played in the development and execution of Aboriginal policy between 1850 and 1950 in three countries: Canada, the US, and Australia. It considers how mixed-ancestry Natives were targets of specific policies, albeit ambiguous and ambivalent ones, as officials struggled to negotiate what were believed to be the immutable categories of race and the reality of hybridity created by

⁵ ‘Mixed-ancestry Natives’ here refers to individuals who were of mixed European and Aboriginal heritage. There is no uniform term shared among the three countries under consideration here, so ‘mixed-ancestry Native,’ ‘mixed-bloods,’ and ‘mixed-race Aboriginal peoples’ are used interchangeably and with consideration to accepted terminology in the country under discussion.

the processes of colonialism. It considers the tension produced by the clash of ideology and lived reality, and how that tension was reflected in unstable and even inherently contradictory policies that simultaneously employed the competing goals of assimilation and segregation. This dissertation pursues three avenues of inquiry in attempting to answer those questions: to examine the ways in which mixed-ancestry Natives were targeted by law and policy; to do this in a comparative context, using Canada, the US, and Australia; and to examine these questions by employing postcolonial theory as its conceptual framework.

Argument

The inherent contradictions of Aboriginal policy and the ambiguity in its practice are the main considerations of this dissertation. More specifically, the role that the presence of mixed-ancestry Natives played in those ambiguous and contradictory processes is at the heart of the argument presented here. The contradiction of a policy that claimed assimilation as its goal but practiced segregation was expressed in the way people of mixed ancestry were dealt with in law and policy. Governments oscillated between categorizing them as ‘Indians’ or ‘Aborigines’ and categorizing them as citizens – an ambivalence and ambiguity that reflected debates about racial mixing in mid-nineteenth-century science. As part of the dominant ‘Western’ paradigm, race ideology compelled colonizers to construct racial dichotomies where they did not exist in the lived realities of hybridized societies. The contradictions apparent in policy were a reflection of the tension between a European paradigm based on a biological-racial dichotomy on the one hand, and the reality of fluid identities in a hybridized world on the other. These contradictions were expressed in law and policy as government officials unsuccessfully attempted to define and categorize people that defied the very nature of definitions and categories.

Fundamentally, I will argue that mixed-ancestry Natives were the targets of ambivalent policies which were shaped by debates among nineteenth-century scientists about the implications of racial mixing. These debates were reflected in the inconsistency and apparent contradictions of the laws and practices that made up Aboriginal policy in Canada, the US, and Australia. In particular, these debates were reflected in the ambiguity and ambivalence of policies that tried to direct how Indigenous peoples of mixed-ancestry should be dealt with, defined, and categorized. The contradictions and ambiguities in law and policy reflect on a larger scale the tension in attempting to apply a hypothetical dichotomized racial hierarchy onto the reality of a hybridized society.

Comparative History as Method

This dissertation first and foremost uses a comparative methodology to examine these questions. It is the contention of this argument that exploring questions about policy and mixed-ancestry Natives in national contexts cannot adequately address the questions raised here. Race, law, and colonialism are transnational issues. Even though they develop in unique ways in national and local contexts, they still retain some of their commonality. Using a comparative methodology to investigate the specific questions regarding mixed-ancestry Natives allows for a transnational exploration, and for uncovering those commonalities. It allows us to see past local differences in order to identify similarities that are attributable to patterns of colonialism. When we explain historical actions in their local contexts we preclude these broader transnational explanations: phenomena and their causes are seen as unique and local processes. Comparative history allows us to explore common experience and thus identify those phenomena and their

causes which are attributable to transnational processes.⁶ In essence, it allows us to identify patterns of colonialism – a phenomenon quite different from the experience of colonialism, but equally important to the understanding of its history. Local and comparative approaches, however, should not be seen as oppositional: they are, instead, complementary.

Comparative history always requires the careful and deliberate attention to choice. Components must have the right balance of commonalities and differences from the outset in order to justify the process. The commonalities shared by Canada, the US, and Australia are probably more readily known. All three are former British colonies, have similar legal systems based on British common law, have similar histories of colonialism, colonization, and settlement, and have diverse and varied Aboriginal populations that had equally diverse and varied relationships with the newcomers. Existing comparative history suggests that these reasons alone are enough to warrant comparisons. Yet, these countries produced very different policies for very different populations with very different identity politics. Thus, the starting point for a comparison here is difference.

To better understand the importance of these differences requires a close and critical examination of the assumptions about the supposed importance of British roots. Inarguably, Canada, the US, and Australia share a number of features, and do so because of their British colonial roots. Indeed, Britain's global position as a major imperial power during the period when racial science was emerging produced a very distinct and even globally dominant idea of race.⁷ Even though each of these countries developed its own nuanced system, all three can claim

⁶ Patricia Nelson Limerick, "Going West and Ending up Global," *The Western Historical Quarterly* 32, no. 1 (Spring 2001): 5–23.

⁷ Ali Rattansi, *Racism: A Very Short Introduction*, 1st ed. (Oxford University Press, 2007), 51–52.

a specifically British idea of empire as the origins of their respective Aboriginal policies.⁸ There are, as the editors of one volume on British settler colonization tell us, “critical links between similar types of colonial formation in vastly different parts of the Empire.”⁹ Accordingly, it is of little surprise to see similarities among the Aboriginal policies of former British colonies.

But how far these common roots go to explain similarities among these three countries is questionable. Each developed policies and attitudes so distinct from the other that it might in fact be of little value to think about them as similar only because they were (former) British colonies with shared legal and social traditions. Indeed, one might even question the legitimacy of ‘British’ as a category with much meaning or relevance, particularly in terms of its effect on shaping settler colonialism. As C.A. Bayly points out, “Britishness was a recent, fragile, and contested ideology of power.”¹⁰ In short, ‘British’ is not a coherent or consistent category. It is not in itself a stable enough concept to explain similarities, and in colonial encounters, it is of secondary importance. Instead, as Homi Bhabha tells us, “the representation of colonial authority depends less on a universal symbol of English identity than on its productivity as a sign of difference.”¹¹ It is not *British* colonialism, then, that creates similarity point of comparison: it is *colonialism*.

⁸ There are two exceptions. First is the influence that the Spanish legal tradition had in the US. Cohen speaks specifically on this point. He juxtaposes the myth of Spanish cruelty towards Indigenous peoples with the “cruelty and treachery” of American citizens. He maintains that what are seen as four ‘American’ principles of Native American law have Spanish origins. Felix S. Cohen, *The Legal Conscience: Selected Papers* (Yale University Press, 1960). The second exception is in Canada, where Quebec provincial law has been shaped by a French tradition.

⁹ Julie Evans, ed., *Equal Subjects, Unequal Rights: Indigenous Peoples in British Settler Colonies, 1830-1910* (Manchester, UK: Manchester University Press, 2003), 1.

¹⁰ C.A. Bayly, “The British and Indigenous Peoples, 1760-1860: Power, Perception and Identity,” in Martin Daunton and Rick Hapern, eds, *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850* (Philadelphia: University of Pennsylvania Press, 1999), 19. In the same volume, Philip D. Morgan also discusses the problems associated with the use of “British” as a distinctive identity as “terminological inexactitude and unease,” see Philip D. Morgan, “Encounters Between British and ‘Indigenous’ Peoples, c. 1500-1800,” in Daunton and Hapern, *Empire and Others*.

¹¹ Homi K Bhabha, “Signs Taken for Wonders: Questions of Ambivalence and Authority Under a Tree outside Delhi, May 1817,” *The Location of Culture* (London: Routledge, 1994), 154.

Importantly, Canada, the US, and Australia are also all *settler* societies. As such, similar patterns of relations between Natives and Newcomers emerge. As Lorenzo Veracini tells us, settler colonialism is “a global and genuinely transnational phenomenon” that is defined by the relationship between a minority invader and a majority Indigenous population.¹² This ratio did not last, though, and as it shifted, so too did the relationship. This holds relevance here, where, by the time policies of assimilation were enacted and administrators began targeting mixed-ancestry Natives, Aboriginal populations were the minority and Newcomers were the majority. This meant that colonizers held a power over the colonized that would be backed, not only by sheer numbers, but by well-developed state systems that reflected the concerns of the majority: land acquisition, in most cases.¹³ It made it easier – in fact, possible – to institute policies of assimilation, even if they would eventually fail. Accordingly, these three countries share not only their British roots, but also their status as settler colonies where the population of the newcomers gradually overtook that of the Natives.

Furthermore, the discursive nature of identity – even on this large scale – ensured that colonialism in turn shaped British ideologies, values, and norms. Accordingly, ‘Britishness’ was created locally in colonies as much as it was in Britain. It is, then, difficult to speak of a ‘British’ way of administering Native Affairs in three different countries when local practice changed what that meant. In addition, sharing a legal or colonial tradition might have little to do with how those traditions were applied and how policy evolved. For instance, there were no treaties in Australia, but there were in Canada and the US. The lack of a uniform or national legal definition for ‘Indian’ in the US before 1934 is also anomalous compared to Canadian and Australian law.

¹² Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2010), 2.

¹³ For a discussion about the acquisition of land as an impetus to British and later, American expansion, see John C. Weaver, *Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal: McGill-Queen’s Press, 2003).

Which is ‘British’? In short, there is no set of features that might make colonialism or even settler colonialism distinctly British. Instead, their commonalities have more to do with the patterns and impetus of colonialism in general than they do of a specific brand of empire.¹⁴

So, then, beyond ‘British’ roots, the commonalities appear all the more intriguing. All three countries entered a similar period of administration starting around the middle of the nineteenth century which coincided with the emergence of racial science. This period entailed a bureaucratic process administered by special government officials. It unfolded roughly over a century: from 1850 to 1950. The period of administration which followed the initial phases of contact and settlement initiated a complex, bureaucratic process that sought to force that which had not occurred on its own: enfolding Indigenous populations into the colonial power structure.¹⁵ And it did so by creating a legal infrastructure that would define, manage, and direct Aboriginal populations towards that stated goal of assimilation. It required a few basic components: defining ‘Aboriginal,’ geographically segregating Aboriginal peoples, excluding them from citizenship, and creating a legal and administrative framework that would apply distinctly to them. They all also shared another significant feature: ambiguity towards and about mixed-ancestry Natives. And in all three countries, this ambiguity drove policy. It was in these processes that the presence of mixed-ancestry Natives exposed the problems of racial thinking, Aboriginal policies, and ideas of progress. Policy makers became preoccupied with figuring out on which side to place mixed-ancestry Natives, and less time on actually executing any coherent policy. All three created government departments to deal exclusively with them, administer this

¹⁴ Ibid.

¹⁵ Bayly argues that this was also a period of intense immigration and settlement. There was a major increase in the amount of settlement in the Americas and other British colonies after 1840. For instance between, 1840 and 1850, “total emigration to the Americas rose nearly 40 percent.” This, as Bayly tells us, spurred a rush for private property, which had serious implications for Indigenous peoples around the world. The “white deluge” as Bayly calls it constituted a critical global change. The bureaucratization of Aboriginal policies and this period of movement and settlement are significantly related. C. A. Bayly, *The Birth of the Modern World: 1780-1914* (Malden, MA: Blackwell Publishing, 2003).

program, and execute the laws in place. And all three used mixed-ancestry Natives as a foil against which these aspects would be created and defined. It is only through examining the ideological underpinnings of colonial thinking found in late nineteenth-century theories of race that the subtext of Aboriginal policy as a mixed-race discourse emerges. Furthermore, it is through a comparative analysis that the meaning of this subtext becomes evident.

This approach is more than just a comparative one. It is also part of a move towards internationalization in history. The study and writing of most history tends to be confined by the borders of the nation-state. Despite growing fields such as borderland studies and others that privilege themes over geopolitics, the profession continues to organize itself mostly in geopolitical terms. Some historians argue that these geographical boundaries have set methodological and conceptual limitations. As Australian historians Ann Curthoys and Marilyn Lake tell us, “History as a professional discipline was constituted to serve the business of nation building, and has accordingly very often seen its task as providing an account of national experience, values, and traditions, thus helping forge a national community. The question historians are now asking is: has history as handmaiden to the nation state distorted or limited our understanding of the past?”¹⁶

Internationalizing history can be viewed as part of a response to this question. It consists of two distinct although simultaneous approaches: one considers the use of comparisons as a means of broadening the methodological scope of national histories, while the other proposes to apply theories and methods typically used outside of that study region. Ideally, a truly internationalized history would include both. Either way, this approach helps us to abandon

¹⁶ Ann Curthoys and Marilyn Lake, eds., *Connected Worlds: History in a Transnational Perspective* (Canberra: ANU ePress, 2006).

nation-centric understandings about our history and to employ methods that are better developed outside of the national frameworks of historiography.¹⁷

Theoretical Frameworks: Between Binaries and Hybridity

This dissertation takes this dual approach of internationalizing history through an empirical comparison and the application of a unique combination of methods and theories. Hybridity theory, postcolonial theory, critical race studies, and discourse analysis all play key roles in this approach. First, the argument is heavily premised on the intersection of postcolonialism and hybridity, in particular, the writings of Edward Said, Homi Bhabha, and Jean-Loup Amselle. While Said posited that colonialism produces binaries, Bhabha argued that they were hybridized; Amselle examined the product of those contradictory but simultaneous processes in West Africa. Critics have argued that Said's thesis has created a false dichotomy in a far more complex world where distinguishing between colonizer and colonized is not that simple. Hybridity is offered here as the alternative, recognizing the contested, unstable, and mixed spaces in which colonialism happens. What results, then, is a tension between Said's concept of an imagined binary, and Bhabha's hybridized spaces.

Edward Said's well-known *Orientalism* provides a key perspective on the ideological mobilizations behind colonialism, particularly as it applies here to identity and difference. Said argued that 'Orientals' were in part the imagined product of a European ('Occidental') colonial undertaking. These images were based in constructed and essentialized differences between

¹⁷ See for instance David Thelen, ed., "Individual Creativity and the Filters of Language and Culture: Interpreting the Declaration of Independence by Translation," *Journal of American History*, 85 (March 1999); Ian Tyrrell, "AHR Forum: American Exceptionalism in an Age of International History," *American Historical Review*, 96 (October 1991); and Jane C. Desmond and Virginia R. Dominguez, "Resituating American Studies in a Critical Internationalism," *American Quarterly*, 48 (September 1996). Ken Coates makes a similar point where he says, "One of the primary benefits of working with historical literature from a variety of countries is that one is exposed to a diversity of academic traditions, historical methods, and conceptual frameworks. Some of these, developed in a specific national context, are well-suited to be adopted in other nations." Ken Coates, "Learning From Others: Comparative History and the Study of Indigenous-Newcomer Relations," *NSR* 16, 1 (2005): 9.

‘East’ and ‘West’ (or ‘colonizer’ and ‘colonized’). Consequently, he suggested, colonialism constructed an imagined binary between two antithetical groups. Said was not suggesting that two antithetical groups actually exist; he was suggesting that this imagined dichotomy constituted an integral aspect of the ideology of colonialism, and in particular, how colonizers viewed the colonized. Colonialism, he says, was justified and motivated by the construction of difference and inequality. These perceived differences, imagined as they may have been, were constituted within the structures and institutions that propagated colonial power, such as law and Aboriginal policy. It is at this juncture where connections among law, identity, and colonialism become evident: legal and governmental institutions were used as a means of imposing and systematizing the imagined identities of which he speaks. Thus, in terms of countries like Canada, the US, and Australia, Aboriginal policies can be viewed as attempts to employ these imagined binaries in order to exercise power, authority, and domination; and the words and actions of officials, codified or otherwise, became the discourses of racial mixing.

But the realities of colonialism complicate that simplistic dichotomy. As its critics have asserted, *Orientalism* does little to consider the nuanced, ambiguous, and ambivalent constructions of identities that colonialism actually produces.¹⁸ Homi Bhabha’s work responds to these gaps. He examines colonialism as processes of ‘hybridity’: that is, colonialism as a space of mixing. Hybridity in this context considers the relationship between the colonizer and the colonized as porous and rejects the clear-cut binaries posited by Said’s ‘orientalism. On the contrary, for Bhabha colonialism is a complex web of hybridity constituted of three basic parts: a process of mixing, a product of mixing, and the space in which mixing happens. The role of the

¹⁸ Daniel Martin Varisco, *Reading Orientalism: Said and the Unsaid* (Seattle: University of Washington Press, 2007).

colonized thus becomes a more active one than Said presents, and perhaps better appreciates the complexities of identity when the binary is challenged.

To be certain, colonialism was and is more complex than that binary has suggested. As Franz Fanon suggests, those who are part of that process of colonialism are never essentially colonizers or colonized.¹⁹ Despite these criticisms, we must not too quickly abandon the idea of dichotomies, for even if it does not represent the reality or experience of colonialism, it represents its impetus. Even though, as Bhabha tells us, colonialism was constituted of contested and hybridized spaces of practice (or ‘praxis’), it was maintained by the ideals set out in the imagination of colonizers. While typically posited as theoretical opposites in the literature, I argue that both are true in considering the position of mixed-ancestry populations in Aboriginal policy and law. This is not a contradiction of fact as much as it is of perception versus reality. Policy-makers, over many decades and even centuries, attempted to force populations into the Native-Newcomer dichotomy. In reality, people are never polar opposites, and binaries fail. The failure of maintaining that racial binary, and the policies that went with it, cannot be reduced simply to disorganization or lack of trying; rather, it must also be seen as an inherent flaw in the ideology behind the action. The disjuncture between the ideology and the practice ultimately produced tensions that were reflected in law and policy as contradiction, ambivalence, and ambiguity. These tensions were paralleled between the discourse of race and the discourse of hybridity, and are reflected in the tension between the discourse of orientalism and the discourse of hybridity theory. These sets of binaries inform the clash between the desire to maintain racial boundaries and the reality of a hybridized colonial world. Exploring that tension constitutes a main consideration of this dissertation.

¹⁹ Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1967).

Jean-Loup Amselle's work helps conceptualize these tensions as explanations, not just curious contradictions. Amselle, a French anthropologist, posits a theory of colonialism in West Africa which combines hybridity and binaries. He argues that hybridity and mixing was the cultural norm, but attempts by governments to impose categories (cultural, racial, or otherwise) on colonial and postcolonial societies has changed the otherwise fluid process of identity-construction. This same effect is evident in the three countries under consideration here where certain individuals, most of whom were mixed ancestry, were excluded from the legal category of Aboriginal with lasting social and cultural effects. As the official recognition of contemporary Aboriginal identities is based in genealogical evidence, the crystallization of identity became lasting and often permanent: the exclusion of an individual from the legal category of Aboriginal applies to his or her descendants. Granted, Indigenous peoples have resisted and challenged these impositions, and in some cases, effected change. However, these attempts have been persistent. Amselle argues that writing is the root of this process where, in centralized bureaucratic states, "tradition and culture are merely optical illusions resulted precisely from the paucity of written sources relative to 'primitive societies'."²⁰ The relationship between ethnic identity, human difference, and written records is central to my argument here where 'discourse' serves as the primary indicator of how theory is expressed in practice.

The works of historian and postcolonial critic, Robert J.C. Young are also relevant to unravelling the complexities of law and identity in regard to people of mixed ancestry. Young's position on hybridity in colonialism also carries the connotation of ambivalence: that colonialism was a concurrent desire and repulsion.²¹ However, Young makes his argument via nineteenth-century racial theory – a departure from the largely contemporary focus of Bhabha and Amselle.

²⁰ Jean-Loup Amselle, *Mestizo Logics: Anthropology of Identity in Africa and Elsewhere* (Stanford, Calif: Stanford University Press, 1998), 35.

²¹ Robert Young, *Colonial Desire: Hybridity in Theory, Culture, and Race* (London: Routledge, 1995), 25.

Young tells us that in nineteenth-century racial theories, such as those posited by de Gobineau and Morton, for instance, this simultaneous desire/repulsion was evidenced by discussions surrounding racial miscegenation: such theories were premised on a social requirement to protect racial purity, yet advocated mixing as a way to advance less ‘civilized’ races. In this way, Young historicizes hybridity in the context of nineteenth-century colonialism as the other two do not. He also establishes a key connection in those contradictions between policy and practice on the one hand and post-Enlightenment racial science on the other. While his emphasis is on sex, gender, and ‘miscegenation,’ the correlation is equally applicable to identity and legal definitions.

This study also employs critical race theory as a key conceptual framework. Like all critical studies of race, this one posits itself on a contradiction: we must acknowledge that which we claim is not real. On the one hand, it questions and criticizes race as an invalid conceptual framework for dividing the world; but on the other, it evokes the very concept of race in order to make this critique.²² A number of arguments from both scientists and social scientists have been made regarding the fallacy of race, and it is now widely accepted that race is a biological myth. But in the late nineteenth and early twentieth centuries, race was accepted as a biological fact. Indeed, the biological myth of race matters little in a world that uses race to perceive it,²³ and where race-based law and its practice has effected real consequences.²⁴ To paraphrase Michael Root, race is not real but we act as if it is.²⁵ Consequently, how people understand race becomes a valid means of analyzing cross-cultural relations and colonial contexts. It is through critical

²² See for instance Joseph L. Graves, *The Emperor’s New Clothes: Biological Theories of Race and the Millennium* (Rutgers University Press, 2001).

²³ David Parker and Miri Song identify this perspective as ‘racial constructivism,’ taken from Charles Mills’ work. They describe this position as one which “highlights the role of historically specific processes of racialisation which give a social reality to categories such as black and white.” David Parker and Miri Song, “Introduction: Rethinking ‘Mixed Race,’” in *Rethinking “Mixed Race”*, ed. David Parker and Miri Song (Pluto Press UK, 2001), 5.

²⁴ Harris, as other legal historians have, argues that race in law was ‘the problem of the twentieth century’. Angela P. Harris, “Equality Trouble: Sameness and Difference in Twentieth-Century Race Law,” *California Law Review* (2000): 1923-2015.

²⁵ Michael Root, “How We Divide the World,” *Philosophy of Science* 67 (September 2000): S628–S639.

race theory that the social construction of race has been uncovered, thus illuminating both overt and covert ways in which race operates in society. Accordingly, I employ race as an organizing tool, since how race is practiced on the ground might matter more than its invalidation by science.

Three aspects of critical race theory are particularly important to this study.²⁶ First, as a critique of liberalism, critical race theory seeks to expose the assumptions that nineteenth-century science brought to colonialism and how it constructed notions of mixed race. Second, it employs a structural determinism that seeks to reveal how the structure and content of law are informed by social thought, and how they affect society. The third and most poignant aspect of critical race theory used here is the essential/anti-essential theme. This aspect questions the inherent homogenization and essentialization of racial categorization and the very categories of race. Such a critical approach to race ties critical race theory in well with Said's Orientalism and Bhabha's hybridity. It also enables a shift from better known studies of 'race' to the lesser known study of 'mixed race. Because race is posited on the existence of essential categories, and mixed-race is posited on an opposition to essentialism, 'race' and 'mixed race' must necessarily be understood and recognized as different constructions. While they overlap in significant ways, how they have evolved historically as both concepts as well as lived realities is not precisely the same. How essentialism was buttressed against anti-essentialism, and what that meant for the development and evolution of Aboriginal policies will be a major underlying consideration of this study.

²⁶ This identification of relevant factors about critical race theory is based on the classification of critical race theory into ten themes by critical race theorists, Richard Delgado and Jean Stefancic in *Critical Race Theory: An Introduction* (New York University Press, 2001).

This study also constitutes a critical legal history.²⁷ One of the relevant factors, I hypothesize, in how identity develops is under the influence of law and official state policy. How Indigenous peoples have been categorized and defined has ultimately shaped the historical trajectory of their identity as an internalized process. Law can either create or deny space for the growth of ethnic identities; this is also true for those of mixed ancestry. Mixed-ancestry Natives were both included and excluded from official recognition that has ultimately affected their identities. Law is also a mirror for dominant social values: it often reflects how policy-makers view race, and can reveal how race intersects with power. An analysis of the legal element of Indigenous mixed-ancestry identities reveals much about state policies of assimilation and segregation, about colonialist attitudes towards race and miscegenation, and about the implications of external and state impositions on group identity. Law and policy proved a significant factor in shaping the course of Indigenous identity by the conviction of racial (and racist) ideas and reactions to miscegenation, particularly as it applied to colonized Indigenous peoples and their European colonizers.²⁸ This study proposes that Aboriginal law and policy was as relevant to the history of mixed-ancestry Natives as it was to those legally defined as ‘Indians.’²⁹

²⁷ Critical legal studies and critical race studies are two closely interconnected areas. In fact, critical race studies originated in examining the legal context of racial construction and discrimination. See especially Kimberlé Crenshaw, *Critical Race Theory: The Key Writings That Formed the Movement* (The New Press, 1995).

²⁸ See for instance: Katherine Ellinghaus, *Taking Assimilation to Heart: Marriages of White Women and Indigenous Men in the United States and Australia, 1887-1937* (Lincoln: University of Nebraska Press, 2006); Victoria Freeman, “Attitudes Toward ‘Miscegenation’ in Canada, the United States, New Zealand, and Australia, 1860-1914,” *Native Studies Review* 16, no. 1 (July 2005): 41–69; Patrick Wolfe, “Land, Labor, and Difference: Elementary Structures of Race,” *The American Historical Review* 106, no. 3 (June 2001): 866–905; Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002).

²⁹ This is an area of historiography that is only beginning to emerge. Heather Devine, for instance, correlates the link between the course of Métis history and Indian policy on the prairies during the late nineteenth century in *The People Who Own Themselves: Aboriginal Ethnogenesis in a Canadian Family, 1660-1900* (University of Calgary Press, 2004).

Methodology and Sources

This dissertation relies on legislation and government documents generated primarily by Aboriginal departments to uncover a mixed-race discourse. However, the search for attitudes about race and mixed race can be a search for the absent. Ideas about race are often unspoken and assumed, a result of the ‘common sense’ element they assume over time. These attitudes were so ingrained in popular thought by the last decades of the nineteenth century that individuals had little need or impetus to articulate them. However, more is at work here. As Michel-Rolph Trouillot tells us, “the production of historical narratives involves the uneven contribution of competing groups and individuals who have unequal access to the means for such production.”³⁰ Mixed-ancestry Natives are certainly among those with ‘unequal access,’ many having been disenfranchised as state-recognized Aboriginal people in some cases, and separated from their communities as a consequence of law in others. They are also among those with ‘unequal access’ because they have often been denied full acceptance in a mainstream society that, ironically, continues to discriminate against them based on their Aboriginality. Thus, discourses of mixed race are hidden from view in two ways: on the one hand, by the power of those who created the records and the lack of power of those who did not; and on the other, by the very nature of race as a dominant discourse that its users have seen no need to explain.

The perspectives of those individuals of mixed ancestry are hidden in another way. The records under consideration here rarely documented the views and experiences of these individuals themselves, particularly in how they constructed, interpreted, and posited their own identities. Instead, they focus on the actions of the policy makers: government officials who were charged with the task of creating and administering the policies which often attempted to order the human world into categories of race. But, as we have learned from generations of historians,

³⁰ Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Beacon Press, 1995).

it is sometimes possible to ‘read between the lines’ and uncover histories that do not always sit visible on the surface. Moreover, the stories of the officials are not always separate from the stories of Aboriginal people. As historian Kristyn Harman argues in her historical biography of Duall, an Indigenous convict in early nineteenth-century Australia, “the colonial forces that shaped this archive are the very same forces that impacted on Duall’s lived experiences and shaped his destiny.”³¹ Likewise, the forces of colonialism that shaped the laws and policies which targeted mixed-ancestry Natives also shaped the lives of those individuals.

One of the ways in which it becomes possible to uncover these ‘silent archives’ is through discourse analysis.³² As a methodological approach, it allows for a unique critical examination of the history of Aboriginal policy. Fundamentally, critical discourse analysis considers the relationship between the form and function of language on the one hand, and social practices on the other.³³ In the case presented here, the language used to identify and describe individuals of mixed ancestry is articulated as a continuous and comprehensive, though changing, narrative comprised of a set of words, statements, ideas, and actions towards and about them. Said’s approach to critical discourse analysis is crucial here. One aspect of his three-part definition of ‘Orientalism’ is in fact based on a discourse analysis. He says that “Orientalism can be discussed and analyzed as the corporate institution for dealing with the Orient – dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it,

³¹ Kristyn Harman, “Multiple Subjectivities: Writing Duall’s Life as Social Biography,” in *Indigenous Biography and Autobiography*, ed. Peter Read, Frances Peters-Little, and Anna Haebich (Canberra: The Australian National University, 2008), 49.

³² Marianne W. Jørgensen and Louise J. Phillips, *Discourse Analysis as Theory and Method* (London: Sage Publications, 2002).

³³ James Paul Gee, “Discourse Analysis: What Makes It Critical?,” in *An Introduction to Critical Discourse Analysis in Education*, ed. Rebecca Rogers (Mahwah, N.J: L. Erlbaum Associates, 2004), 19.

ruling over it.”³⁴ It is the combination of these aspects that creates the discourse, beyond mere conversations or statements.

‘Mixed race’ also has a ‘corporate institution,’ some of which has been recorded in archival and government records. Government officials made statements about mixed-ancestry Natives, authorized views of them, described them, taught about them, settled them, and ruled over them. It is, more specifically, the qualitative and quantitative examination of the use of terms that suggest the importance of racial mixing and the racially mixed. The frequency with which specific words are used, such as ‘halfbreed’ and ‘half-caste,’ or references to ‘blood’ or blood quantum imply that the concepts behind these words are significant. That officials used these terms in vague and undefined ways has veiled their importance, and in fact, the importance of ideas about mixed race to the development of Aboriginal policies and the broader processes of colonialism. The ambiguous and ambivalent ways in which they used them also exposes underlying assumptions and uncertainties about race, racial mixing, sex, and the ways in which colonialism employed tools like law and government to control them. The lack of explanation about these terms suggests that unspoken assumptions about race are at work here; thus, it is what is missing that exposes its importance. Moreover, these terms had far-reaching, if unintended, consequences. Discourse is not just the words themselves, but the accumulative effect of them when taken together, along with actions and practices.³⁵ So, even though laws and policies that targeted mixed-ancestry Natives may not have intended to do so in any unified or coherent way, those laws and policies and the way they were executed or practiced had that effect. Just as nineteenth-century literary texts created a coherent discourse of ‘Orientals,’

³⁴ Edward W. Said, *Orientalism*, 1st Vintage Books ed. (Vintage, 1979), 3.

³⁵ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 7.

government officials created a textual record that constitutes a coherent discourse on ‘mixed-ancestry Natives.’

There are two aspects of discourse analysis relevant here. The first, discourse theory, holds that discourse constructs meaning in the social world. However, that meaning cannot be fixed, as the use and meaning of language is constantly in flux. Hence, discourse is “constantly being transformed through contact with other discourses,” or through “discursive struggle” as different discourses engage with each other to “achieve hegemony.”³⁶ Where the discourse of mixed-ancestry Natives here represents multiple, competing theories, this perspective is especially helpful. The second aspect is *critical* discourse analysis, which examines discourse among the many other means by which social production is generated. Thus, the discourse on mixed-ancestry Natives is not the final word. It competes with identity-production and self-ascription, for instance, which contrasts how government officials imagine or create mixed-ancestry Natives. This parallels Said’s methodology of ‘Orientals’ who are both ‘imagined’ by colonialism, but also exist independently and outside of those constructions. Accordingly, the discourse *about* mixed-ancestry Natives does not necessarily or completely define who they are or how they experienced their relationships with governments.

Taking a discourse analysis approach requires identifying key terms, but their definitions are difficult to discern. The term ‘mixed-ancestry Native’ is undefinable and ambiguous – a condition that makes calculating the size of those populations equally ambiguous. While governments in all three countries attempted to document mixed-ancestry populations as part of regular census counts, there could never be any accuracy given the undefined or ill-defined terms. Furthermore, there is no one, singular term that can correctly designate all peoples of mixed ancestry. Here, the term refers to individuals who are of dual European and Indigenous

³⁶ Ibid., 6.

ancestry, in whatever combination that might be and irrespective of how those individuals constitute their individual or collective identities. It focuses on this combination in order to isolate ways in which Aboriginal policy specifically targeted mixed-ancestry Natives so as not to confuse those processes with other sets of discriminatory practices that derived from slavery and immigration, both of which carry different implications and considerations. It refers to those who identified as Indigenous, those who identified as white or ‘ordinary citizens,’ as well as those who identified as Métis, Halfbreed, half-caste, mixed-blood, or any other self-ascription. The term is purposely meant to be undefined so as to leave space for a variety of identities, and not impose an external definition to the exclusion of an internal one (even though that space was not always allowed historically). It is also purposely undefined so as to not assign any specific identity to those individuals. Furthermore, officials were always ambivalent and ambiguous about definitions, so it is never entirely clear to whom they are referring in laws and policies. To be clear, the point here is not to define or identify mixed-ancestry Natives, but to discuss how they have been defined, talked about, and administered, as well as to uncover the ambiguity of those terms.

The crux of the research relies on laws and policies that were employed to define, exclude, or include individuals and groups of mixed ancestry. They fall under the jurisdictions of departments that were created solely for the purposes of administering Aboriginal populations, though occasionally they may also include laws and policies administered by land departments whose main function was the control, administration, and allotment of land. Some of those records are the same for all three countries, such as legislation and annual reports of Aboriginal departments. But the emphasis of the research varies among these countries, a reflection of the differences in how policies of colonialism were executed. The analysis of each country’s

approach to mixed-ancestry Natives begins with a corpus of key legislation and policy, discussed further below, that does not appear the same but served a similar function in targeting mixed-ancestry Natives: in Canada, the Indian Acts and their predecessors, treaties, and scrip; in Australia, various laws which explicitly included, excluded, and defined Indigenous mixed-blood groups; in the US, treaties and allotment policy documents.

In the US, the Office of Indian Affairs, now called the Bureau of Indian Affairs, was the main repository for records related to the identification of Native Americans. There are two main policies that have produced documents relevant to this study: treaties and allotment. While no uniform definition for 'Native American' existed across the many phases of policy experienced in that country, treaties and allotment are the two policies that provide the most evidence regarding the treatment of mixed-ancestry Natives and uncover mixed-race discourses. Some treaties singled out mixed-ancestry Native individuals and groups for special concessions at the tribes' request, suggesting specific attitudes about race and identity. Allotment, the second policy of serious consideration for the US, produced a different set of documents. Legislation was enacted at the federal level to implement the policy of allotment, but this is not where discourse about mixed-ancestry Natives is found. Instead, views on identity and eligibility were discussed and recorded in the congressional hearings and reports that investigated the many disputes over eligibility. The latter set of documents is of particular value in regard to identifying specific attitudes about mixed-ancestry Natives and their place in American society. They have the dual benefit of not only helping to locate broader government attitudes about race and racial mixing, but also to provide a sense of how Indigenous peoples themselves felt about policies, including those that attempted to impose external race-based notions of identity. In contrast to Canada and Australia, then, the text of legislation is of little value.

For Australia, the research relies most heavily on legislation compared to the other two countries. Each state governed its Aboriginal affairs, and each state had legislation that was specifically for Aboriginal peoples. Most major policies were enacted under this legislation, which served as a continuous umbrella for policy. In relation to Canada and the US, Australia possessed the most detailed body of legislation on the identity of Indigenous mixed-race populations. Under what were typically called ‘protection’ acts, states legislated a broad array of legal controls over Aboriginal lives. There are three factors which make those laws relevant in terms of examining the role of mixed-ancestry Natives in Aboriginal policy. First was that they sought to define ‘half-castes,’ the term used to describe ‘mixed-race’ Aboriginal peoples, and to distinguish them from definitions of ‘Aborigine’ or so-called ‘full-bloods. Second, protection acts served as anti-miscegenation laws, legally restricting who Aboriginal people could marry or otherwise associate with, including in the labour sector. Not surprisingly, these laws were difficult, if not impossible, to enforce, and ‘mixed-blood’ populations arose despite these laws.³⁷ Third, and in contrast to the second, these laws also introduced a policy that sought to forcibly assimilate Indigenous mixed-blood individuals into mainstream society by removing children from their Aboriginal families. Now widely known as ‘The Stolen Generations,’ the policy of child removal was enabled largely under these protection acts. The analysis of this body of legislation is supplemented by a number of documents, both archival and government publications. Debates in state legislatures, annual protection reports, an extensive array of state-level commissioned reports, and both state and federal archival documents provide context to the legislation. Each of these exhibits more overt comments about racial mixing than do similar documents in Canada and the US.

³⁷ See especially Freeman, 2005.

For Canada, discourse on mixed-ancestry Natives is most difficult to discern, but there is a broader range of documents from which to glean it. Three larger areas of policy are relevant here: the Indian Act, treaties, and scrip. The first is comprised of comprehensive legislation enacted for the administration of Aboriginal people. It includes the Indian Act and its predecessors, such as the Gradual Civilization Act and the Gradual Enfranchisement Act. Indigenous mixed-ancestry populations were specifically named in these laws, particularly in the sections that defined 'Indian. Second, land cession treaties provide some perspective on the role of mixed race in Aboriginal policy. Aboriginal leaders often requested the inclusion of their 'Halfbreed cousins' in the treaties. These requests were recorded in the transcriptions of the negotiations, and later reported by treaty commissioners in their reports and correspondence. However, unlike the US, these requests were often denied. Yet, individuals of mixed-ancestry were in fact included in treaties, suggesting their ambiguous place in Canadian Aboriginal policy. Finally, scrip is an important policy in the evolution of a mixed-race discourse. This policy, which extinguished Métis Aboriginal title, comprises an important aspect of a legal mixed-ancestry identity and identification. Ultimately, scrip served as a means to define 'Halfbreed' as a legal category distinct from that of 'Indian' by excluding some Aboriginal people of mixed-descent from treaties. For treaty Indians who eventually took scrip, this process served as a means of quick enfranchisement. Consequently, the documents, comprised mostly of correspondence and orders-in-council, are rich depositories of an official discourse that reflects attempts to separate 'race' from 'mixed race.

To those familiar with the course of Native-Newcomer historiography in each or any of these three countries, this undertaking might seem too familiar a story. Much attention has been given to definitions of 'Indian' or 'Aboriginal' in Canadian, American, and Australian

historiography, and there are numerous histories on Aboriginal policy. Consequently, we have a fairly clear idea about how governments defined 'Indians' and 'Aboriginals,' how those laws and policies evolved, and in some instances, the effects they had on individuals, communities, or particular demographic groups. For some, it seems this field is significantly saturated and to add further to it only serves to 'beat a dead horse,' as it were.

But I believe there is more to be learned. What we know little about is how it is that the same laws and policies that sought to define 'Indian' also sought to define or distinguish those who were of mixed ancestry. And this becomes relevant when we see that in all three of these countries (as well as many others around the world), governments singled out people of mixed ancestry, albeit to varying degrees, in law and policy. At various times and places, they were permitted entry into programs or granted benefits designated specifically for Indians, or were denied access to these privileges. Undoubtedly, this has had lasting effects for those who are not officially recognized as Aboriginal. A closer examination of how mixed-ancestry populations have been targeted can not only tell us something about those affected individuals, but also contribute to broader understandings of colonialism, perceptions of race, and legal identity. Such an examination also acknowledges and uncovers a uniquely 'mixed race' discourse in law and policy that ran separately from a narrative about 'Aboriginals. How we understand race and colonialism thus is presented from the different perspective of *mixed* race.

Outline

In uncovering this discourse, I begin with nineteenth-century debates about racial hybridity which demonstrated the ambivalence and ambiguity scientists felt towards those who were racially mixed. They presented a number of conflicting, contradictory, and illogical theories about racial mixing that emerged in popular thinking within a few short decades. I then move on

to demonstrate that the laws and policies of all three countries reflect the ambivalence and ambiguity of racial science. Specifically, I will show that definitions and attempts at definitions, either implicit or explicit, as well as the inclusion/exclusion of mixed-ancestry natives in Aboriginal policies (treaties or reservations, for instance) show that governments were attempting to maintain dominant ideologies based in racial dichotomies, an analysis which will rely on Said. I will argue that these attempts, failed as they were, resulted in confusion, ambivalence, and inconsistencies because colonialism produced hybridized populations, in Bhabha's terms. Fundamentally, government policies demonstrated inherent contradictions that become evident only when we single out a mixed race discourse.

This argument begins with a chapter on the historiography of Aboriginal policy and racial mixing, which presents both the contributions of and gaps in the existing literature. Next, Chapter Three introduces the empirical and theoretical framework of the dissertation, providing a background on racial science in the nineteenth century and the theories on racial mixing. It provides an overview of Aboriginal policy in each of the three countries. It also offers further discussion of how Said and Bhabha's works contribute to an understanding of the contradictions of Aboriginal policy and the role that mixed-ancestry Natives played in it.

The next three chapters respectively examine how in Canada, the US, and Australia, mixed-ancestry Natives were specifically targeted by policies, albeit in ambivalent ways. Chapter Four argues that Canadian policy demonstrated ambiguity towards mixed-ancestry Natives in treaty policy, the Indian Act, and scrip. Chapter Five argues that American policy demonstrated ambiguity towards mixed-ancestry Natives in allotment policy. And Chapter Six argues that Australian policy demonstrated ambiguity towards mixed-ancestry Natives through oscillating policies of assimilation and anti-miscegenation. In chapter Seven, a conclusion offers

some specific comparisons and broader themes that can be pulled out of this empirical evidence, providing it with some meaning. The dissertation ends with a final chapter that examines continuing discourses of mixed race in Aboriginal policies and some recent court decisions that suggest slowly changing attitudes about race, identity, and mixed-ancestry Natives.

It is my contention that ambiguity and ambivalence mean something, and that they mean something more than indecision, inattention or apathy. Instead, I believe that ambiguity and ambivalence suggest significant shifts in or at least challenges to paradigmatic schemes of thought. They represent moments of tension where ideas clash with reality while their actors struggle to rectify the incompatibility of their worldviews with lived realities. In Aboriginal policy, ambiguity and ambivalence, and especially about those of mixed ancestry, also meant something. In the late nineteenth and early twentieth centuries in Canada, the US, and Australia, they signified a number of things. First, they reflected a fundamental belief in race as biology, and that all humans could be divided into immutable categories based on phenotype: features such as skin colour, hair type, and nose shape. They reflected the belief that those physical characteristics had social and cultural implications. Second, they exposed a fundamental problem in the philosophy of race. Racial theories about mixing were not a singular unified idea. They were made up of numerous contested and debated hypotheses about the viability and desirability of racial mixing. Scientists vehemently debated these ideas, but never came to a consensus. Policy makers were thus ambiguous because racial scientists were ambiguous. They were unable to come up with a viable theory of racial mixing that was supported by actual evidence, yet they could not entirely abandon their notions about race as biology and its implications for society and culture. Finally, ambiguity and ambivalence reflected a growing realization among policy officials that the idea of race was failing in the wake of the reality of hybridity. Officials were

increasingly confronted with conflicting evidence of science, biology, and race as they played out in life, and the theory did not always align with the practice. While this did not put an end to racial ideology or the attempts to employ it, it impeded its success. Aboriginal policy *could not* succeed, not only for the pragmatic reasons with which we are already familiar, but because it was built on conflicting and unsustainable ideas. Those ideological conflicts and the tensions they produced are the subject of this dissertation.

Chapter 2 - Literature Review

This is a dissertation on Aboriginal policy in three countries and how it specifically targeted people of mixed ancestry. There is a plethora of sources available on Aboriginal policy in Canada, the US, and Australia, yet there is little done in terms of how policy specifically affected mixed-ancestry Natives. There is an equally extensive body of literature on the history of interracial sexual relationships and colonialism, but less so on the *product* of that mixing. While not entirely ignored in the literature, the relationship between mixed-ancestry Natives and Aboriginal policy has assumed a role peripheral to what have been considered more visible or accessible topics. The problem is compounded by the specific focus of this dissertation: not only does it deal with a topic that has been little explored, it does so in a comparative fashion among three countries which exhibit enough difference to make such a comparison challenging. Furthermore, there has been little work on comparative Indigenous history – surprising, considering the numerous topics which appear to readily present themselves for comparison and the transnational nature of colonialism. Nonetheless, three broad areas of historiography provide the key areas to consider for a literature review: Aboriginal policy, mixed-ancestry Natives and miscegenation, and comparative Indigenous history.

The place and meaning of contradiction and ambivalence, introduced in the first chapter, are central to the argument being presented in this dissertation. Thus far, little has been done to examine the causes of these contradictions. It has been largely accepted that the goal of policy was indeed assimilation; that is to say, we have taken the word of these historical actors. It has also been largely accepted (or at least, unchallenged) that the ambiguity and ambivalence displayed in the execution of this policy of assimilation is simply part of the operation of government. The discrepancy between the professed intentions of policy on the one hand and the

actual execution of those policies and their results on the other is viewed as a naturally occurring feature, without need for explanation, and often reduced to the kinds of behaviours that typify the bureaucratic machinery that is government. Academic interpretations have paid more attention to the empirical motivations of policy and its evolution, such as Aboriginal resistance and non-compliance, lack of appropriate funds, national concerns, and settler demands. While all true, these explanations do little to decipher the inherent and fundamental contradiction of Aboriginal policies: assimilation required racial amalgamation, but racial thinking demanded segregation and the maintenance of racial boundaries.

Nation, State, and Tribe

This gap in the existing literature is in part explained by the evolution of historiography. Any genre becomes increasingly complex over time as one topic leads to further and deeper analysis; such is the case with Aboriginal history. It has a relatively short timeline, not emerging as a specific genre until the 1970s and 1980s. Historical literature written prior to this period tended to ignore the roles and contributions of Indigenous groups to national history and failed to provide critical examinations of colonialism or its legacy. The dominance of politics, economics, and ‘great men’ as historical subjects tended to preclude discussions about society, diversity, and the experiences of minorities and those who were oppressed by or disempowered through the institutions that maintained and perpetuated social, racial, and economic inequalities. A number of social and professional developments following World War II changed how historians conceptualized history and, consequently, how they chose their subjects.¹

¹ It is widely accepted in Canadian and American historiography that the exposure to the Holocaust compelled national governments to rethink their treatment of minority populations and to re-examine the status and condition of Aboriginal peoples and policies towards them. This is less so the case in Australian historiography, though Aboriginal policy underwent a similar shift at the same time. See for instance, J.R. Miller, *Skyscrapers Hide the Heavens*, Rev. ed. (University of Toronto Press, 1991), 220.

These changes led to the first wave of Aboriginal histories, which exposed some of the underlying assumptions about colonialism. Academics began acknowledging how colonialism had been accompanied by those very oppressive and disempowering institutions, and how Indigenous peoples had been adversely affected by them. Historiography about Indigenous peoples and colonialism shifted accordingly, experiencing in a similar progression in Canada, the US, and Australia. The foundational first steps in the 1960s, 70s, and 80s were gradually followed by an expansion of the genre to incorporate deeper analyses and, especially recently, more regionally and locally nuanced ones. This genre has since grown exponentially and developed into a dense field filled with a range of research. While sharing these similarities, each country has developed its own tradition in regard to writing Aboriginal policy, though they might be considered trends rather than absolutes. The country-specific traditions are reflections of three interrelated factors: how Aboriginal affairs were organized in those countries, the jurisdiction of law, and how records are organized. In Canada, Aboriginal policy is generally written from a national perspective; in Australia, at the state level; and in the US, from a tribal one. These approaches have produced constructive and insightful histories, respectively contemplating national, regional, and local interpretations of race, identity, and the role of law and policy. However, they are approaches that do not place the broader transnational implications of colonialism, like race and racial mixing, at the centre. They do not allow for an examination of the common patterns inherent to colonialism that become evident with comparisons. Instead, they privilege difference over similarity. One of the goals of this dissertation is to examine the similarities and explore parallel transnational processes evidenced by the practice of Aboriginal policies.

Canada

In Canada, the study of Aboriginal policy has focused on the federal level – a reflection of jurisdiction for Aboriginal matters. Indian Affairs was (and is) a federal responsibility, as set out in the 1867 Constitution Act. Thus laws and policies affecting Aboriginal people were generally developed at that level. The earlier foundational works reflect this organization. A few seminal articles, especially L.F.S. Upton’s “The Origins of Canadian Indian Policy” in 1973 examined pre-Confederation Aboriginal policy under British colonial rule, establishing 1830 as a momentous shift in the relationship between Natives and Newcomers.² A reader published in 1982, *As Long as the Sun Shines and Water Flows*, might be considered to constitute the founding work on Aboriginal policy.³ Antoine Lussier and Ian Getty brought together a number of important articles which critically analyze the history of Aboriginal policy, including John L. Tobias’ important article, “Protection, Civilization, Assimilation.”⁴ This reader was followed by two equally important histories of policy, beginning with J.R. Miller’s *Skyscrapers*, originally published in 1989, a survey of Native-Newcomer relations.⁵ Although it is not the only survey in Canadian historiography, Miller’s work is singled out as the one that uses policy as a central organizing feature.⁶ This was followed by Noel Dyck’s *What is the Indian Problem?* a few years later, which focused more exclusively on the process of assimilation and its effects.⁷ At this

² L.F.S. Upton, “The Origins of Canadian Indian Policy,” *Journal of Canadian Studies* 8, no. 4 (1973): 51–60.

³ Ian L. Getty and Antoine S Lussier, eds., *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies* (University of British Columbia Press, 1983).

⁴ Other important readers followed shortly, such as F. L Barron and James B Waldram, eds., *1885 and After: Native Society in Transition* (Regina, Sask: University of Regina, Canadian Plains Research Center, 1986); Robin Fisher and Kenneth Coates, eds., *Out of the Background: Readings on Canadian Native History* (Toronto: Copp Clark Pitman, 1988).

⁵ Miller, *Skyscrapers Hide the Heavens*.

⁶ See also Olive Patricia Dickason, *Canada’s First Nations: A History of Founding Peoples from Earliest Times* (University of Oklahoma Press, 1992); Arthur J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada’s Native People* (Lester Publishing, 1996).

⁷ Noel Dyck, *What Is the Indian “Problem”: Tutelage and Resistance in Canadian Indian Administration* (Institute of Social and Economic Research, Memorial University of Newfoundland, 1991).

stage, the attention was on the actions of officials and the effects of policy; consequently, the research focused largely on those individuals who fell under the official category of 'Indian.'

These works and the many other histories of Aboriginal policy in Canada cover a vast and diverse range of topics. But one thing they share is their focus on what are now recognized as the more visible aspects of policy over the hidden ones. The immediate effects of certain aspects of the Indian Act on reserve populations are readily apparent – the loss of freedom for Aboriginal people with the institution of the reserve system, for instance. All of these works cover these aspects well, and have provided foundational building blocks for further analyses of policy. But what is less visible, and consequently, given less attention, are the more veiled effects of policy, such as the implicit ways that scrip represented uncertainty about mixed-race identities; or how the Indian Act slowly but gradually narrowed the category of 'Indian,' thus excluding people of mixed ancestry. Only very recently have historians begun to critically analyze the categories created by the bureaucratic processes that accompanied colonialism and explore the more covert ways that they defined and excluded individuals, especially those of mixed ancestry. Consequently, little attention has been given to how racial mixing influenced policy or how policy was applied to those individuals more directly. In part, this is the result of the availability of historical sources: exclusion from the written historical record has often resulted in exclusion from the historiography. But it is also a matter of emphasis. This dissertation seeks to give these aspects more attention by bringing them from the periphery to the centre.

The lack of attention to mixed-ancestry Natives and policy is exacerbated by the cumulative effect that distinguished 'Indian' policy from 'Métis' policy. In Canada, the historiography can roughly be divided into two streams: those dealing with 'Indian' and those

dealing with 'Métis. Métis historiography has produced its own literature and is generally told separately from 'Indian' history; that is, the history of those Aboriginal peoples who were the recipients of federal policies.⁸ This is evidenced by the historiography on scrip, which almost exclusively discusses it as a Métis policy, mostly without providing a critical analysis of the individuals included in that category.⁹ These works were classified under the subject heading of Métis history, but they ignore what is a complex cultural identity oversimplified with its singular association with Canada's Red River population, particularly at the expense of knowing and understanding other mixed-ancestry groups.¹⁰ Furthermore, historiographical discussions about the Métis have been conflated with those about mixed ancestry. Consequently, the idea of racial mixing is assumed within Métis history, Métis history is reduced to the fur trade and Red River,

⁸ This historiography comprises a long tradition that began with works by George F.G. Stanley in 1936, Marcel Giraud in 1945, and Joseph Kinsey Howard in 1965. The 1970s and 1980s witnessed a new surge in Métis historiography, a result of interest generated by the movement to have Riel posthumously pardoned and by the initiation of land claims by the Manitoba Métis Federation. Old topics, such as land claims, settlement, and rebellion were reconsidered, while new topics, including cultural, feminist, and community histories, were introduced. The works of Jennifer Brown and Sylvia Van Kirk in 1980 were particularly influential, both breaking new ground and opening new directions in Métis historiography. The five-volume *Collected Writings of Louis Riel* in 1985, edited by George Stanley, made a wealth of archival documents accessible to historians. The 'scrip' debate was a major factor in Métis historiography throughout the 1980s and early 1990s, although this debate focused primarily on the Red River Métis. Diane Payment and Nicole St-Onge have been equally significant contributors to western Métis historiography, expanding the boundaries of Métis historiography outside of Red River, and covering topics that include social, economic, religious, and material culture. More recent works, including those by Heather Devine and Brenda Macdougall, consider the centrality of family, kinship and community to Métis cultural identity. Indeed, there is a large body of Métis historiography.

⁹ Much of the literature on scrip engages a debate over the culpability of government in fraud and speculation. See especially D. N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887," *Manitoba Law Journal* 10 (1980 1979): 415; Theresa A Ferguson and Joe Sawchuk, *Metis Land Rights in Alberta: A Political History: The Handbook* (Edmonton: Metis Association of Alberta, 1982); Thomas Flanagan, *Metis Lands in Manitoba* (Calgary: University of Calgary Press, 1991); Gerhard Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996).

¹⁰ Scholars have often pointed to the dominance of works on the Red River Métis, or 'Red River myopia,' to the exclusion of Métis communities and populations in other areas. See Trudy Nicks and Kenneth Morgan, "Grand Cache: The Historic Development of an Indigenous Alberta Métis Population," in *The New Peoples: Being and Becoming Métis in North America*, ed. Jacqueline Peterson and Jennifer S.H. Brown, 163-181 (Winnipeg: University of Manitoba Press, 1981); J.R. Miller, "From Riel to the Métis," *Canadian Historical Review* 69, 1 (1988); and Macdougall, 2006.

and both ignore the many mixed-ancestry individuals, both status and non-status, who are not Métis.¹¹

More recently, the traditions that have treated Métis and Indian policy separately have begun to change. While the application of critical race theory is not particularly prominent in Canadian historiography, a few works suggest a changing landscape in this regard. Heather Devine explores what can sometimes be considered a false divide between Indians and Métis in *The People who Own Themselves*.¹² Through the examination of the history of one family, she demonstrates the problematic nature of government definitions that divide families, even siblings with the same parents, into two different legal categories. As many other studies on Aboriginal identity maintain, legal identities often do not correlate with the kinship ties that typically constitute Aboriginal identities. Another significant work is Bonita Lawrence's *"Real" Indians and Others*, which offers a gender analysis of how the Indian Act has systematically attacked Aboriginal status, resulting in a process of urbanization where Natives are one of many multicultural subjects.¹³ Although she provides a history of this process, her main concern is with the contemporary identities of those urban Natives. Finally, Pamela Palmater's recent *Beyond Blood* considers how federal policy as laid out in the Indian Act affects the identities of individuals, particularly those of mixed-ancestry who have been disconnected from their communities.¹⁴ Mixed ancestry constitutes grounds for losing or being denied government recognition, she concludes, but not for changing one's identity as Aboriginal. Indeed, the discrepancy between status and band membership since its division in 1985 has been the subject

¹¹ See Jacqueline Peterson and Jennifer S.H. Brown, *The New Peoples*. An exception to the focus on Red River ethnogenesis is the more recent Ute Lischke and David T. McNab, *Long Journey of a Forgotten People, The: Métis Identities and Family Histories* (Wilfrid Laurier University Press, 2007).

¹² Devine, *The People Who Own Themselves*.

¹³ Bonita Lawrence, *"Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (Vancouver: University of British Columbia Press, 2004).

¹⁴ Pamela Doris Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing, 2011).

of controversy. In any case, these works point to the beginnings of a trend where colonial and racial categories are more critically analyzed.

They also point to a process of internationalizing historical methodologies. Lawrence's work in particular indicated a shift in established historiographical trends that reflected the adoption of postcolonial theory and gender analysis into discussions about Native-Newcomer relations and Aboriginal policy. Works by Robert C. Young, Ann Laura Stoler, and Anne McClintock, to name a few, influenced how colonialism was written about in Canada. For instance, Adele Perry's *On the Edge of Empire* combines race and gender in a post-colonial framework to analyse imperialism in BC between 1849 and 1871. She examines the unstable nature of identity, demonstrating that "racial categories are fictive and changing rather than real and stable."¹⁵ Her chapter on mixed-race relationships uncovers some of those previously unacknowledged histories, focusing on the important role that mixed-race relationships had on the colonial frontier in BC. However, like most studies that examine the intersection of race, sex, and colonialism, Perry focuses on the 'mixing' as opposed to the 'mixed,' or the process over the product. Although the focus on policy is integral to our understanding of Native-Newcomer relations, and has provided us with a framework in which to situate our understanding, it is now possible to move beyond and expand our approach to Aboriginal history. Renisa Mawani's *Colonial Proximities* is one such example.¹⁶ She considers, not only the role of race and gender in the creation of colonial categories, but also how immigration contested and destabilized British ideals about social and racial mores. Canadian historiography is, then, incorporating some

¹⁵ Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001), 5.

¹⁶ Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921* (Vancouver: University of British Columbia Press, 2009).

of the trends in theory and method evolving outside of Canada to develop new critical approaches to Native-Newcomer history.

The US

The historiography of Native American policy in the US is comparatively vast, but a few trends stand out. Research tends to occur at the tribal level, undoubtedly a result of the way in which legislation was passed and archival documents are organized. In addition, the sheer volume of documentation often precludes the examination of policy from a national level. As Harold L. Ickes wrote in the introduction of Felix Cohen's 1941 (and first) edition of the seminal *Handbook of Federal Indian Law*, "Such, however, is the complexity of the body of Indian law, based upon more than 4000 treaties and statutes and upon thousands of judicial decisions and administrative rulings, rendered during a century and a half, that one can well understand the vast ignorance of the subject that prevails even in ordinarily well informed quarters."¹⁷ The allotment policy, for instance, was set out with vague legislation of general application, but was instituted with an additional piece of legislation or a formal agreement for each specific tribe. Thus, American Indian law consists of both laws of general application and laws of specific tribal application. It was a system that produced a plethora of bills, resolutions, legislation, orders, and other legal instruments – both a blessing and a burden to historians.¹⁸ A few notable works have tackled the challenge of a comprehensive history of policy, including Francis Paul Prucha, who produced a number of volumes on the history of law and policy. His two-volume *The Great Father* published in 1984 is an unprecedented work in its length and breadth, and

¹⁷ Harold L. Ickes, "Foreword" in 2005 edition, reprinted from 1941 edition, Felix S Cohen, *Felix S. Cohen's Handbook of Federal Indian Law*, 2005 ed. (Charlottesville, Va: Mitchie, 1982), xxv.

¹⁸ Native American law has indeed been made accessible by two collections: Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*. (Washington: Govt. Print. Off, 1903); Cohen, *Handbook of Federal Indian Law*.

provides an excellent account of almost every stage of Native affairs policy in the US.¹⁹ The same year, Frederick Hoxie's *A Final Promise* offered an account of assimilation as a national policy. Both are considered important works in establishing a national framework for understanding the political relationship between Native Americans and the federal government.

Those who have followed in the footsteps of these foundational works have tended to approach Native American policy in one of two ways: by focusing on one specific policy phase; or by focusing on one specific tribe (or sometimes, both).²⁰ Of the former, a large number of the works deal with allotment. There is a wide store of literature on this subject which contributes significantly to understanding Native American policy as one fundamentally concerned with land. Greenwald's *Reconfiguring the Reservation* provides a succinct historiography of allotment in the US and outlines some noteworthy trends.²¹ She identifies five key authors who have created what she argues has become the dominant narrative of dispossession: D.S. Otis, J.P. Kinney, Loring Benson Priest, Leonard Carlson, and Janet McDonnell.²² Collectively, she says, these authors represent a dispossession narrative which has created passive victims out of Indians, and "clouds our understanding" of the policy. One of the consequences, she argues, is that we focus on long-term effects over immediate implications. She points out that "scholars

¹⁹ Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984).

²⁰ One example of this trend is, L. Susan Work, *The Seminole Nation of Oklahoma: A Legal History* (Norman: University of Oklahoma Press, 2010). Work examines a plethora of legislative, judicial, and policy initiatives as they applied not only to the general Native American population with an eye to the specific effects they had on the Seminole Nation. She focuses mainly on the twentieth century, a period she frames as one of struggle for self-determination for the Seminole people, and on the efforts of the Nation to reclaim their right to govern themselves. Indeed, the sheer size of her research exemplifies the challenges of examining the history of Native American policy. It also explains why such history is often written as a tribal one.

²¹ Emily Greenwald, *Reconfiguring the Reservation: The Nez Percés, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002).

²² Delos Sackett Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1934); Jay P. Kinney, *A Continent Lost, a Civilization Won: Indian Land Tenure in America* (New York: Ayer Publishing, 1937); Loring Benson Priest, *Uncle Sam's Stepchildren: The Reformation of United States Indian Policy, 1865-1887* (New York: Octagon Books, 1969); Leonard A. Carlson, *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming* (Westport, Conn.: Greenwood Press, 1981); Janet A. McDonnell, *Dispossession of the American Indian, 1887-1934* (Bloomington: Indiana University Press, 1991).

already know quite a lot about the *explicit* intentions of the Dawes Act: Reformers proposed it as the centerpiece of a program designed to assimilate Indians into the American mainstream. But they have not thought as carefully about the Dawes Act's *implicit* spacial agenda."²³ This agenda reflected Native resistance to colonizing efforts through allotment where tribes used the process to organize communities in accordance with their own customs and needs – not unlike the ways they resisted impositions on their identities. The same power struggles evident in this 'spacial agenda' and resistant to the appropriation of land can be considered in the resistance to the appropriation of identity. Indeed, this gap in the literature that Greenwald points out can be in part filled by the examination of race and authority to determine tribal membership.

As Greenwald suggests, there is more to allotment than dispossession. It was also an exercise in other colonial processes that extended beyond land demands, such as the organization of ambiguous populations into clear racial-political categories. For instance, as both Melissa Meyers and Katherine Ellinghaus suggest in their studies of allotment among the Chippewa White Earth reservation in early twentieth-century Wisconsin, allotment policy demonstrated underlying ideologies of colonialism as well as intertribal tensions about ethnicity and identity.²⁴ Gary Zellar's *African Creeks* offers the same kind of critical analysis of allotment among Creek constructions of categories in a racially ambiguous South.²⁵ As these examples demonstrate, there is space for a more critical analysis of how and why membership on rolls was decided, what role race played in those decisions, and what degree of power tribal authorities and government officials had over this process. While it is well understood that land and its eventual

²³ Emily Greenwald, *Reconfiguring the Reservation: The Nez Percés, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002), 7.

²⁴ Melissa L Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920* (Lincoln: University of Nebraska Press, 1994); Katherine Ellinghaus, "The Benefits of Being Indian: Blood Quanta, Intermarriage, and Allotment Policy on the White Earth Reservation, 1889-1920," *Frontiers: A Journal of Women Studies* 29, no. 2/3 (June 2008): 81–105.

²⁵ Gary Zellar, *African Creeks: Estelivste and the Creek Nation* (Norman: University of Oklahoma Press, 2007).

misappropriation were major factors in this process, the ideological and epistemological influences have not been equally considered. Consequently, we know less about what allotment says about people of mixed ancestry as part of the broader nineteenth- and twentieth-century racial discourse.

These historiographical traditions also mean that any consideration of mixing is done at the tribal level. A few notable works demonstrate this point. Fay A. Yarbrough examines a similar situation among the Cherokee in *Race and the Cherokee Nation*.²⁶ She argues that throughout the nineteenth century, the Cherokee gradually adopted a stratified concept of race-based citizenship as a three-tiered system based on biology – Cherokee at the top, followed by whites, then blacks. She claims that Cherokees identified more with whites and their level of social and economic power than with blacks and their lack of it, reflecting the influence of western ideas of race on Aboriginal constructions of human difference. Another example is Theda Perdue's "*Mixed Blood*" *Indians*, in which she examines racial construction among those nations which occupied the south-east US, and looks at how 'foreigners' were adopted into native societies under various circumstances, such as inter-marriage, trade, capture, travel, exploration, or social freedom.²⁷ Perdue focuses on how south-east tribes reacted to and incorporated ideas about race and racial mixing into their own kinship patterns, and how those policies changed their systems. However, much as Yarbrough concluded, race as biology did infiltrate Indigenous kinship systems.²⁸ Works on the Lumbee identity also fit into broader discussions about race and identity, especially Malinda Lowrey's *Lumbee Indians in the Jim*

²⁶ Fay A Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008).

²⁷ Theda Perdue, "*Mixed Blood*" *Indians: Racial Construction in the Early South*, Mercer University Lamar Memorial Lectures no. 45 (Athens: University of Georgia Press, 2003).

²⁸ *Ibid.*, 58

Crow South.²⁹ Like Zellar, Meyer, and Ellinghaus, Lowrey examines the racial complexities of changing and contested Native American identity, though she focuses on North Carolina. What emerges from these works, then, is that the idea of ‘mixed race’ had some, although varying, degrees of influence on Native American identity.

Likewise, a few works which examine the problems of identity in terms of federal policies, and especially tribal recognition, make a notable contribution to the larger topic under consideration in this study. Bruce Miller’s *Invisible Indigenes* examines how previously fluid identities among Indigenous groups on the Pacific Northwest have been ‘frozen’ by federal policies. He especially analyzes the federal recognition process in the US, but he considers how similar processes of federal recognition have been experienced throughout the world. The problems associated with official recognition are also examined by Eva Marie Garrouette in *Real Indians*.³⁰ They both suggest that identity construction is equally complex among all Indigenous groups, and that the federal system is unable to cope with those complexities.³¹ But this is a small body of work, each of which focuses on a specific tribe.

This is the case for the south-west, too. The American south-west is one of the most ambiguous and difficult regions to deal with in regard to Indigenous mixed-ancestry identity. Prior to 1848, Spain’s hold on the region ensured it followed some of the same patterns of intermarriage that other Latin American regions did. However, its shift to US territory following

²⁹ Malinda Maynor Lowrey, *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation* (University of North Carolina Press, 2010). This work was preceded by Karen I. Blu, *The Lumbee Problem: The Making of an American Indian People* (University of Nebraska Press, 2001).

³⁰ Eva Marie Garrouette, *Real Indians: Identity and the Survival of Native America* (Berkeley: University of California Press, 2003).

³¹ Studies of racial mixing as a product of the fur trade in the Great Lakes area have also contributed to this discussion; however, they tend to be focused on the seventeenth and eighteenth centuries, thus predating the administrative phase of Aboriginal policies as well as the onset of racial science as a dominant paradigm. See for instance Susan Sleeper-Smith, *Indian Women and French Men: Rethinking Cultural Encounter in the Western Great Lakes, Native Americans of the Northeast* (Amherst: University of Massachusetts Press, 2001); Tanis C Thorne, *The Many Hands of My Relations: French and Indians on the Lower Missouri* (Columbia: University of Missouri Press, 1996).

the war meant the imposition of an entirely new legal tradition that undoubtedly influenced not only how people identified, but how they were identified by government officials. One example is Ramón A. Gutiérrez's *When Jesus Came, The Corn Mothers Went Away*, where he traces the marriage customs of the Pueblo Indians and the Spanish up to 1846. Gutiérrez's study of the Pueblos tells us from the start that all peoples are culturally mixed. The 'Pueblos' do not constitute a genetically pure culture with a long and timeless history; instead, "what we now recognize as discrete ethnic categories and tribal affiliations were in considerable flux during the sixteenth century."³² Indeed, this could be said for any culture group in any century.

In many respects, the US has a more advanced pool of literature relating to the issue of race and hybridity as Indigenous legal issues. Part of this has to do with the development of critical race studies, a genre of American origins. This is even more so the case for the newly emerging critical *mixed-race* studies in the 1980s, which, as its name suggests, applies the tenets of critical race theory to mixed-race peoples.³³ But this also has to do with the nature of official Native American identity in the US. Based in an explicit criterion of blood quantum, the racial character of a legal Native identity is more palpable. Critics of Native policy recognize and acknowledge this basis, and a wide array of publications has analyzed the contemporary implications of what is a historic process. For instance, a study by Robert E. Bieder, *Science Encounters the Indian*, provides a treatment of racial philosophy as it shaped colonial thinking

³² Ramón A Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Stanford, Calif: Stanford University Press, 1991), xxvii.

³³ Critical Mixed Race Studies as a specific genre is considered to have emerged with two foundational publications: Paul R. Spickard, *Mixed Blood: Intermarriage and Ethnic Identity in Twentieth-Century America* (Madison: University of Wisconsin Press, 1989); Maria P. P. Root, *Racially Mixed People in America* (London: Sage Publications, 1992). Although there have been a small number of works on mixed-race studies, most of which have come out of the US, it was the formation of the CMRS group out of DePaul University in Chicago in 2010 that has clinched this topic as a specific sub-discipline. However, Native American identities have thus far played a small role in the development of that genre.

about Aboriginal people in nineteenth-century US.³⁴ A counterpart does not exist for Canada. Thus, American literature has tended to more thoroughly analyze the role of race and racial mixing in Indigenous identity.

While these are only a few among many works that examine the various facets of Native American federal policy history, they provide some general themes and trends that help explain why an examination of mixed-ancestry Natives from a federal perspective has been difficult. It has taken decades of work to begin to unpack the plethora of legal and policy documents that might allow for an exploration of connections between policy and identity at a deeper level. They also point to the complexity of identity politics and the challenges of attempting to explore this topic in a national and international context – a challenge felt more so in the American context.

Australia

At the same time that new fields of inquiry into Aboriginal history were unfolding in Canada and the US, C.D. Rowley and Henry Reynolds were tackling new territory in Australia. Rowley's groundbreaking trilogy fundamentally altered the way Australians looked at their history and the role of Aboriginal people in it.³⁵ Rowley's research became the first comprehensive study of the history of Native-Newcomer relations in Australia, published in three volumes between 1970 and 1972. His 1967 essay, "Who is an Aboriginal? The Answer in 1967," was published as an appendix to the first of these volumes, has provided decades of discussion and analysis on race and identity in Australia. On its heels was Henry Reynolds' work, a long and continuing line of publications which began with *Aborigines and Settlers* in

³⁴ Robert E Bieder, *Science Encounters the Indian, 1820-1880: The Early Years of American Ethnology*, 1st ed (Norman: University of Oklahoma Press, 1986).

³⁵ C.D. Rowley, *The Destruction of Aboriginal Society* (Canberra: Australian National University Press, 1970); C.D. Rowley, *Outcasts in White Australia* (Canberra: Australian National University Press, 1971); C. D. Rowley, *The Remote Aborigines*, Pelican Books (Ringwood, Vic: Penguin Books Australia, 1972).

1972. It focused on the previously ignored legacy of violence of the Native-Newcomer relationship, while many of his other works went on to chronicle the legacy of Aboriginal policies. Both historians introduced Australia to a ‘new’ history of Native-Newcomer relations and ushered in an era of critical national historiography.

Since that time, historians have produced a large store of literature on a vast array of Aboriginal issues. However, after these works, the trend has been to conduct research at the state or territory level.³⁶ As in Canada and the US, this historiographical trend is a reflection of governmental jurisdiction. Until 1967, Aboriginal affairs was a state matter, after which it was centralized under the federal government. Thus, the historiography of Australia, much like that of the US, is burdened (or blessed, depending on one’s perspective) with a lack of cohesion. Historical analysis of the relationship between law, race, and identity is fragmented by state- or tribe-centered histories. This creates a more nuanced history that is appreciated at the local level, but comes at the expense of broader national perspectives where trends in law and colonialism might start to become visible.

Each state or territory in Australia, then, has its own historiography.³⁷ Anna Haebich’s *For Their Own Good* is an excellent examination of Aboriginal policy from 1900 to 1940 in

³⁶ While this has indeed been the trend, there are a number of good works that take a national perspective. See especially Richard Broome, *Aboriginal Australians: A History Since 1788*, 3rd ed. (Crows Nest, N.S.W: Allen & Unwin, 2002); Lynette Russell, *Colonial Frontiers: Indigenous-European Encounters in Settler Societies* (Manchester: Manchester University Press, 2001); Ann McGrath, ed., *Contested Ground: Australian Aborigines Under the British Crown* (St. Leonards, N.S.W: Allen & Unwin, 1995); Patricia Grimshaw, *Creating a Nation* (Ringwood, Vic.: McPhee Gribble Publishers, 1994); Bain Attwood, *The Making of the Aborigines* (Sydney: Allen & Unwin, 1989); Henry Reynolds, *Aborigines and Settlers: The Australian Experience, 1788-1939*, (North Melbourne, Vic., Cassell Australia, 1972).

³⁷ A number of good state and territorial level studies include Richard Broome, *Aboriginal Victorians* (Allen & Unwin, 2005); Heather Goodall, *Invasion to Embassy: Land in Aboriginal Politics in New South Wales, 1770-1972* (St Edwards, NSW, Australia: Allen & Unwin, 1996); Tony Austin, *Simply the Survival of the Fittest: Aboriginal Administration in South Australia’s Northern Territory, 1863-1910* (Darwin: Historical Society of the Northern Territory, 1992); Raymond Evans, *Race Relations in Colonial Queensland: A History of Exclusion, Exploitation, and Extermination*, (St. Lucia: University of Queensland Press, 1988); Pat Jacobs, “Science and Veiled Assumptions: Miscegenation in Western Australia,” *Australian Aboriginal Studies* (1986): 15–23.

Western Australia.³⁸ She examines the implications of increasing settler populations in Western Australia on Aboriginal lifeways, and explores the application and effects of policies in that state. Tony Austin has written a number of works on the Northern Territory, many of which have focused on Aboriginal policy organized around specific administrators. For instance, his 1997 *Never Trust a Government Man* is organized around the administrations of the Chief Protectors who served between 1911 and 1939.³⁹ Indeed, the biographical approach has been a popular method of analyzing Aboriginal policy history in Australia.⁴⁰ This approach attends to the nuanced ways in which individuals can influence and execute policies and appreciates the localized nature of history. However, policy is then reduced to the creation of top administrators and their individual ideologies. While typically sympathetic to the harshness of policy and the implications it had for Aboriginal people, it has the effect of presenting those implications as exceptional – a result of a specific individual’s actions as opposed to a systemic and endemic process of colonialism.

Australian historiography has a stronger tradition of considering race philosophy and critical race theory in its histories than either Canada or the US, likely a result of the more

³⁸ Anna Haebich, *For Their Own Good* (Perth: UWA Publishing, 1992).

³⁹ Tony Austin, *Never Trust a Government Man: Northern Territory Aboriginal Policy, 1911-1939* (Darwin: NTU Press, 1997).

⁴⁰ For a review and history of biography and autobiography in Australia, see Oliver Haag, “From the Margins to the Mainstream: Towards a History of Published Indigenous Australian Autobiographies and Biographies,” in *Indigenous Biography and Autobiography*, ed. Peter Read, Frances Peters-Little, and Anna Haebich (Canberra: ANU ePress, 2008). For samples of this genre, see also Rani Kerrin, “Charles Duguid and Aboriginal Assimilation in Adelaide, 1950–1960: The Nebulous ‘assimilation’ Goal,” *History Australia* 2, no. 3 (January 3, 2011); Cameron Raynes, *The Last Protector* (Kent Town, SA: Wakefield Press, 2008); Russell McGregor, “Avoiding ‘Aborigines’: Paul Hasluck and the Northern Territory *Welfare Ordinance, 1953*,” *Australian Journal of Politics & History* 51, no. 4 (2005): 513–529; Tony Austin, “Cecil Cook, Scientific Thought and ‘Half-Castes’ in the Northern Territory 1927–1939,” *Aboriginal History* 14, no. 1 (1990): 104–122; Paul Hasluck, *Shades of Darkness: Aboriginal Affairs, 1925–1965* (Carlton, Victoria: Melbourne University Press, 1988). Unlike Canada or the US, there are also numerous biographies and autobiographies from the perspective of Aboriginal people. See for instance, Tex Camfoo, Gillian Cowlshaw, and Nelly Camfoo, *Love Against the Law* (Canberra: Aboriginal Studies Press, 2000); Kim Scott, *Benang: From the Heart* (South Fremantle, WA: Fremantle Arts Centre Press, 1999); Rita Huggins, *Auntie Rita* (Canberra: Aboriginal Studies Press, 1994); Ann Curthoys, “Eugenics, Feminism, and Birth Control: The Case of Marion Piddington,” *Hecate* 15, no. 1 (1989): 73–89; Bain Attwood, “‘In the Name of All My Coloured Brethren and Sisters’: A Biography of Bessy Cameron,” *Hecate* 7, no. 1 & 2 (1986): 9–53.

explicit racial discourse of law and policy there. This is evidenced both by works that make race ideology their main focus, and by empirical histories that employ race as a theme for analyzing the history of specific policies.⁴¹ One noteworthy example is Henry Reynolds' *Nowhere People*.⁴² Reynolds examines the attitudes and ideas behind Australian policies that targeted Aboriginal people of mixed ancestry, arguing that the result was the exclusion of mixed-race Aboriginal people from both Aboriginal and non-Aboriginal society. Another example is Tony Austin's work on the Northern Territory, especially his *I Can Picture the Old Home So Clearly*, which focuses on the specific impetus that racial mixing had for policy in that territory. He argues elsewhere that "Aboriginal Departments in Australia were universally preoccupied with the 'half-caste problem'."⁴³ Other works explore the ideologies behind the practice of race, or how those ideologies were executed in everyday life. Kay Anderson's *Race and the Crisis of Humanism* examines European understandings of what it meant to be human in eighteenth-century philosophy in terms of race and colonialism in Australia. Russell McGregor's *Imagined Destinies* explores the racial science behind the 'doomed race' theory, the widely held assumption that Aboriginal people were gradually dying out at the start of the twentieth century.⁴⁴ Finally, Warwick Anderson's work has brought a deeper analysis to the workings of race ideologies in a specifically Australian context. *The Cultivation of Whiteness* is especially

⁴¹ Some examples include Ann McGrath, "Consent, Marriage and Colonialism: Indigenous Australian Women and Colonizer Marriages," *Journal of Colonialism and Colonial History* 6, no. 3 (2005); Patricia Grimshaw, "Interracial Marriages and Colonial Regimes in Victoria and Aotearoa/New Zealand," *Frontiers: A Journal of Women Studies* 23, no. 3 (2002): 12–28; Fiona Paisley, "Race Hysteria, Darwin 1938.," *Australian Feminist Studies* 16, no. 34 (March 2001): 43–59; Patrick Wolfe, "Land, Labor, and Difference: Elementary Structures of Race," *The American Historical Review* 106, no. 3 (June 2001): 866–905; L. R. Hiatt, *Arguments About Aborigines: Australia and the Evolution of Social Anthropology* (Cambridge: Cambridge University Press, 1996); Austin, "Cecil Cook, Scientific Thought and 'Half-Castes' in the Northern Territory 1927-1939."

⁴² Henry Reynolds, *Nowhere People* (Camberwell, Vic.: Penguin Group Australia, 2008).

⁴³ Austin, *Never Trust a Government Man*, 17.

⁴⁴ Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880-1939* (Carlton, Vic: Melbourne University Press, 1997).

significant in terms of understanding reactions to racial mixing in Australian history.⁴⁵ There, Anderson explores the application of racial and biological theories in the context of an increasingly racialized Australia where mixing received considerable attention. Elsewhere, he discusses more specifically the topic of miscegenation, arguing that scholars were divided between a pro-miscegenation ‘oceanic approach’ that held that mixed races in the Pacific would produce a hardier stock, while others, mainly those with a nationalist agenda, maintained an anti-miscegenetic sentiment.⁴⁶ With their closer analysis of the relationship between European racial thinking and the practice of colonialism, these works set Australian historiography apart from scholarship in Canada and the US.

Gender analysis and feminist studies have also had a greater influence on Australian Aboriginal historiography, likely a result of the emphasis on racial mixing throughout the late nineteenth and early twentieth centuries. Ann McGrath, Katherine Ellinghaus, Patricia Grimshaw, Fiona Paisley, and Victoria Haskins make up but a few of excellent historians who examine the intersection of race and sex in critical analyses of colonialism in Australia. Ellinghaus’s work on interracial marriage has emphasized the gendered relationships of race in colonialism and the role that the state played in mitigating (or attempting to mitigate) interracial relationships. Victoria Haskins work includes an examination of the gendered and racialized aspects of domestic labour and child removal. Ann McGrath’s *Born in the Cattle* examines the important gender and race aspects of rural labour.⁴⁷ Her chapter, “Black Velvet,” is especially revealing of the sexual relationships between Aboriginal women and white men and speaks to

⁴⁵ Warwick Anderson, *The Cultivation of Whiteness* (Carlton, Vic. Melbourne University Press, 2005).

⁴⁶ Warwick Anderson, “Ambiguities of Race: Science on the Reproductive Frontier of Australia and the Pacific Between the Wars,” *Australian Historical Studies* 40, no. 2 (June 2009): 143–160.

⁴⁷ Ann McGrath, *Born in the Cattle: Aborigines In Cattle Country* (Sydney: Allen & Unwin, 1987).

the complex ways in which these relations occurred.⁴⁸ It also provides an excellent example of how gender and feminist studies have advanced the analysis and understanding of Aboriginal policies, where the relationship between gender, race, and colonialism were more overt than in Canada and the US.

Finally, over the last few decades, a series of inquiries and debates raised awareness about the history of Aboriginal policy in Australia. The 1995 Human Rights inquiry into the policy of child removal in Australia, many of whom were mixed-ancestry, altered the landscape of public, academic, and political perspectives of Aboriginal history across Australia.⁴⁹ The inquiry brought an increased awareness of the specific historical experiences of ‘mixed-race’ Aboriginal people and contributed to academic attention to racial mixing in Australia. It has also affected the interpretation of history in other ways. For instance, Aboriginal policy as an exercise of genocide has framed some of the literature on the topic.⁵⁰ It has also placed the interpretation of race and history at the center of public and political debates. But more specifically for the purposes here, it has opened a space for the examination of ideas like racial mixing, blood quantum, and the legitimacy of Aboriginal identity, allowing for more complex and nuanced understandings of identity and its history. Either way, it has created a space to discuss the broader ideological context to a specific mixed-race Aboriginal policy and its legacy, and provides an opportunity to situate transnational themes into national contexts.

⁴⁸ This chapter was published previously as Ann McGrath, “Black Velvet: Aboriginal Women and the Relations with White Men in the Northern Territory: 1910-1940,” in *So Much Hard Work: Women and Prostitution in Australian History*, ed. Kay Daniels (Sydney: Fontana, 1984), 233–297.

⁴⁹ Australia, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Canberra, ACT: Australian Government Publishing Service, 1997).

⁵⁰ See Katherine Ellinghaus, “Biological Absorption and Genocide: A Comparison of Indigenous Assimilation Policies in the United States and Australia,” *Genocide Studies and Prevention* 4, no. 1 (2009): 59–79.

Mixed-ancestry Natives and ‘Miscegenation’

An equally important body of literature to the relationship between mixed-ancestry Natives and Aboriginal policy is the much smaller one on racial mixing. Seminal works by Sylvia Van Kirk, Jennifer Brown, Ann Laura Stoler, Anne McClintock, and Peggy Pascoe have all made significant contributions, even creating new fields of historical inquiry, through an examination of interracial sexual relationships.⁵¹ These works provide a sense of the intricate and even intimate constructions of gendered racialization that occurred in various colonial settings. But they have all been concerned with the nature, social meaning, and public reaction to those interracial relationships; that is, the *process* of ‘miscegenation. They tell us less about the *product* of those relationships: the mixed-ancestry or mixed-race children. While we know that there were varying degrees of acceptability and rejection of interracial relationships, what of those children who resulted from those unions? Works on racial mixing and interracial sex do not always consider the importance of the nineteenth-century racial hierarchy in determining the impact these laws had on various populations, or the degree to which they were applied.⁵² As Pascoe noted, marriages among whites and Indians were often allowed despite laws saying otherwise – a degree of latitude generally not extended to Blacks. From the perspective of nineteenth-century racial thinking, Indians were a more ‘acceptable’ racial other on a scale where blacks were always the most vilified.

⁵¹ Van Kirk, *Many Tender Ties*; Brown, *Strangers in Blood*; Stoler, *Carnal Knowledge and Imperial Power*; Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (New York: Routledge, 1995); Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009).

⁵² Pascoe argues that marriages between Indians and whites were “sheltered by two contradictions:” one was that courts upheld these marriages, despite laws against them; the second is that state laws regarding marriage contradicted federal jurisdiction over Indians. Pascoe, *What Comes Naturally*, 100.

Comparative Indigenous History

Finally, it is worth considering the state of comparative Indigenous history as a genre itself, separate from other categories considered here. There seems limitless potential for comparative examinations of colonialism and Indigenous history, but the challenges are significant. Comparative history requires knowledge and expertise in multiple fields, familiarity with numerous historiographical traditions, and an additional level of analysis: one must analyze the evidence historically *and* comparatively. Added to this is a problem of methodology. One of the most fundamental problems of comparative history is that it is a small body framed only loosely by an ill-defined methodological approach. Works which are categorized as comparative are often actually multi-regional. Readers are left to draw loose connections on their own from a collection of essays connected by broader themes rather than precise or specific comparisons. Of course, it is difficult to be too critical: finer comparisons are often precluded by the vastly different experiences and historical circumstances of colonialism in local, regional, or national contexts.

While a number of good comparative histories have recently emerged in the literature,⁵³ relatively few examine racial mixing comparatively. A chapter by Vicki Luker compares the ‘half-caste problem’ in Australia, New Zealand, and Western Samoa in the early twentieth century.⁵⁴ She examines some of the differences in ‘miscegenation’ in these three countries. As Luker notes via her bibliography, most attempts to compare processes of racial mixing were early twentieth-century anthropological studies that uncritically employed the racialized attitudes

⁵³ See especially Rachel Standfield, *Race and Identity in the Tasman World, 1769-1840* (London: Pickering & Chatto, 2012); Penelope Edmonds, *Urbanizing Frontiers: Indigenous Peoples and Settlers in 19th-Century Pacific Rim Cities* (UBC Press, 2010); and Margaret D. Jacobs, *White Mother to a Dark Race Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Lincoln: University of Nebraska Press, 2009).

⁵⁴ Vicki Luker, “The Half-Caste in Australia, New Zealand, and Western Samoa Between the Wars: Different Problem, Different Places?” in *Foreign Bodies: Oceania and the Science of Race 1750-1940*, ed. Chris Ballard (Canberra: ANU ePress, 2008).

and assumptions of that era. This fact might account for an otherwise absent contemporary analysis: undoubtedly, most historians would be hesitant to align themselves with those attitudes. Likewise, a 2005 article by Victoria Freeman compares attitudes towards miscegenation in Canada, the United States, Australia, and New Zealand in the late nineteenth and early twentieth centuries.⁵⁵ Freeman begins with four similar colonies, all British, in order to examine the differences in these attitudes. Katherine Ellinghaus compares interracial marriages in nineteenth-century Australia and the United States.⁵⁶ She uses the comparative method in order to isolate the relevance of class to interracial marriages and examine how power is gendered. She also reveals how differences in official attitudes towards assimilation resulted in a more segregated society in Australia. Patrick Wolfe compares discourses of miscegenation in Australia and the United States to consider the connection between territorial expropriation and assimilationist policies.⁵⁷ Ann Laura Stoler compares *metisage* in French Indochina and the Netherlands Indies in a 1992 article.⁵⁸ As these and other authors have demonstrated, a comparative approach to Indigenous history is not only feasible, but a worthwhile endeavour.

There are many more works, relevant in theme and topic, that could be considered multi-regional anthologies. Some of these focus on the ideas of empire, colonialism, and imperialism. *Empire and Others*, a collection edited by M.J. Daunton and Rick Halpern, brings together research on Aboriginal peoples, identity, and British colonizers. A collection edited by Diane Kirkby and Catharine Coleborne, *Law, History, Colonialism*, brings together essays which focus largely on law as a tool of colonialism. In a similar vein, Hamar Foster's *The Grand Experiment*

⁵⁵ Freeman, "Attitudes Towards 'Miscegenation'."

⁵⁶ Katherine Ellinghaus, "Margins of Acceptability: Class, Education, and Interracial Marriage in Australia and North America," in *Frontiers* 23, 3 (2002).

⁵⁷ Wolfe, "Land, Labour, and Difference."

⁵⁸ Ann Laura Stoler, "Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia," in *Comparative Studies in Society and History*, 34, 3 (July 1992): 514-551.

examines the importance of law and legal culture in British settler societies.⁵⁹ These works, and others that fit the genre, all present opportunities for comparisons on transnational themes of colonialism. They demonstrate the wide range of possibilities for comparative methodology and the potential it has for uncovering the hidden and systemic processes of colonialism. However, as with most anthologies, there is little opportunity for authors to directly contribute to a comparative analysis outside of an introduction often presented by its editors.

A second set of multi-regional collections focuses on the intersecting themes of sex, race, and colonialism. Ruth Roach Pierson and Nupur Chaudhuri's *Nation, Empire, Colony* brings together individually authored articles that examine those themes in multiple regions, including New Zealand, the US, West Africa, Mexico, Ireland, Iran, and India, to name a few.⁶⁰ Martha Hoades' *Sex, Love, Race* examines similar intersecting themes of sex, race, and colonialism for the US over a number of historical periods.⁶¹ *Moving Subjects*, edited by Tony Ballantyne and Antoinette Burton offers a collection of essays on similar themes. Like the subset of literature that has examined similar and intersecting themes, these works demonstrate the relevance of gender analysis and feminist theory for race and colonialism. They point to the many ways in which race is a gendered process, and how that process shaped colonialism in different and similar ways across the world. But, as with the anthologies on law and colonialism, those on race and gender are limited by a format that allows little opportunity for an explicit comparative analysis.

⁵⁹ Hamar Foster, ed., *The Grand Experiment: Law and Legal Culture in British Settler Societies* (Vancouver: University of British Columbia Press, 2008).

⁶⁰ Ruth Roach Pierson, ed., *Nation, Empire, Colony: Historicizing Gender and Race* (Bloomington, Ind: Indiana University Press, 1998).

⁶¹ Martha Elizabeth Hodes, ed., *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999).

These latter works might more aptly fit under the heading of ‘transnational history. As historians Ann Curthoys and Marilyn Lake describe, transnational history is “the study of the ways in which past lives and events have been shaped by processes and relationships that have transcended the borders of nation states.”⁶² The more recent increase in popularity of fields that include transnational, border, and global studies has renewed interests in comparative history. As authors Lester and Dussart point out, “In recent years there have been numerous accounts of colonial relations, seeking to move beyond the core-periphery dichotomies of traditional imperial history by tracking the movement of people, ideas, capital and commodities across networks that connected the British imperial metropole and its colonies.”⁶³ Research that is more accurately described as ‘transnational’ or ‘border studies’ differs in that it generally engages comparative analysis more directly. Lester and Dussart demonstrate this approach in examining Aboriginal ‘protectorates’ as trajectories of transnational colonial histories. Tracing the protectorate as an idea which “travelled from Trinidad across the Caribbean, thence to Tasmania” and “refined in Britain ... with reference to the Cape Colony in South Africa, and was then imported to New South Wales in Australia, travelling finally to Aotearoa New Zealand.”⁶⁴ In doing so, the authors demonstrate how imperialism and its ideas are both local and global – or, as they word it, that “British colonial culture and practices were the result of trajectories between vastly different colonized places.”⁶⁵ While this dissertation does not specifically consider how the ideas about race and racial mixing moved from place to place, it does demonstrate those similar trajectories of policy in ‘vastly different places.’

⁶² Ann Curthoys and Marilyn Lake, “Introduction,” in Curthoys and Lake, eds., *Connected Worlds*, 1.

⁶³ Alan Lester and Fae Dussart, “Trajectories of Protection: Protectorates of Aborigines in Early Nineteenth Century Australia and Aotearoa New Zealand,” *New Zealand Geographer* 64, no. 3 (2008): 205. Paul Gilroy’s work might be cited as one of the key and seminal works in transnational histories. Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge: Harvard University Press, 1993).

⁶⁴ Lester and Dussart, “Trajectories of Protection,” 206.

⁶⁵ Ibid.

Conclusion

This vast store of literature tells us much about the history of Native-Newcomer relations and of the role that race has played. But there are four major components missing that this dissertation seeks to address. First, the existing literature does not consider ways in which mixed-ancestry Natives have been the targets of specific laws and policies. Second, it does not examine how an understanding of the roles of those groups can explain the contradictions of policy, especially the inherent tensions between policies of assimilation and segregation. Third, it does not consider how comparative examinations of Aboriginal policies can reveal answers to these questions. And finally, it largely does not consider how postcolonial and critical race theories can contribute to a better understanding of those groups and their roles in history. It is these components this dissertation seeks to address.

Chapter 3 - Science, Theory, and Practice: The “Problem” of Racial Mixing

*The census will, I think, reveal some startling facts in regard to the Indians. We have been under the impression for the last 25 years that the Indian has been increasing. That, I think, will appear not to be true for the last 10 years... The loss is mostly confined to the full bloods. Mixed bloods hold their own better, and are increasing in this land. The Indian people will not remain as a separate race among us.*¹ Senator Dawes, US Congress, 1890

*Persons of mixed white and red blood – commonly known as “breeds” – will be described by addition of the initial letters “f.b.” for French breed, “e.b.” for English breed, “s.b.” for Scotch breed, and “i.b.” for Irish breed. For example: “Cree f.b.” denotes that the person is racially a mixture of Cree and French; and “Chippewa s.b.” denotes that the person is Chippewa and Scotch. Other mixtures of Indians besides the four above specified are rare, and may be described by the letters “o.b.” for other breed. If several races are combined with the red, such as English and Scotch, Irish and French, or any others, they should also be described by the initials “o.b.”*² 1901 Census Instructions, Canada

*Having travelled in the course of my investigations a distance of some 14,000 miles..., the conclusion is irresistible that the great problem confronting the community today is that of the half-caste. While it appears beyond doubt, from opinions expressed generally throughout the State, that the full-blooded aborigines are decreasing in number, it is very certain that the half-castes are multiplying rapidly.*³ Royal Commission on Aborigines, Western Australia, 1935

As these quotes suggest, impressions about shifting racial demographics in the late nineteenth and early twentieth centuries occupied the consideration of a broad range of government officials. These records subtly reflected debates over Aboriginal assimilation and segregation, but they also reflected emerging scientific theories about human viability and how it connected to racial difference. The myth of the ‘dying Native’ was considered ‘common knowledge’ at the end of the nineteenth and early twentieth centuries, as indicated by the popularity of Herbert Spencer’s ‘survival of the fittest’ hypothesis – a kind of Darwinian natural selection for culture.⁴ This was not just an academic argument that developed in the course of

¹ Lake Mohonk Indian Conference, Fourth Session, Thursday night, 9 October 1890, Senator Dawes, 885.

² LAC RG 31 Vol. 1417 “Census Material,” n.d.

³ Western Australia. “Report of the Royal Commissioner appointed to Investigate, report, and Advise upon matters in relation to the Condition and Treatment of Aborigines,” 1935.

⁴ Spencer introduced this hypothesis in *Principles of Biology* (1864), but the scheme of human progress was developed over several works published in the 1880s in three volumes under the title *The Principles of Sociology*.

post-Enlightenment science (although that was certainly part of it), nor was it just a product of a few short-sighted officials. Instead, it was a widely held belief that was ingrained in the popular imagination.⁵ This belief accompanied colonialism throughout the world, and not entirely without cause. One of the major historical consequences of colonialism was depopulation: exposure to new diseases, warfare, and even deliberate policies of extermination resulted in population losses as high as 90 per cent.⁶ But this myth was also a convenient justification for the appropriation of Indigenous land. If Natives were a ‘vanishing race,’ as many believed, then they were not really being displaced. It was, in fact, considered the natural order of things: Natives would die out in the face of advancing civilization as a kind of ‘natural selection.’

The long-held myth that Aboriginal people were dying out was challenged only by the equally pervasive myth that racially mixed Aboriginal populations were increasing, and some felt, at an alarming rate. Whether there was an actual increase in *numbers* or just an increased *notice* of mixing, it was increasingly considered something to be identified, counted, monitored, and even deterred. Systematic observation and categorization were part of the post-Enlightenment epistemologies where recording human difference was witnessed in population and demographic. As populations were increasingly categorized into races, debates over biological viability of miscegenation, or racial mixing, complicated this taxonomic approach: categories were made unstable by mixing, and scientists were at odds over its possible

Herbert Spencer, *The Principles of Sociology, Three Volumes* (New York: Appleton, 1874-1896). A similar scheme was also presented by Lewis Henry Morgan. See Lewis H. Morgan, *Ancient Society* (New York: Henry Holt and Company, 1877). For a general discussion, see Thomas F. Gossett, *Race: The History of an Idea in America*, New ed., (Oxford University Press, 1997); for the relevance of these ideas to Aboriginal policy, see Brian W. Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy*, New ed. (University Press of Kansas, 1991) and McGregor, *Imagined Destinies*.

⁵ For a full discussion on the myth of the ‘dying Native,’ see Patrick Brantlinger, *Dark Vanishings: Discourse on the Extinction of Primitive Races, 1800-1930* (Ithaca, N.Y: Cornell University Press, 2003).

⁶ The rate of population loss has been heavily debated. See for instance, Noble David Cook, *Born to Die: Disease and New World Conquest, 1492-1650* (Cambridge: Cambridge University Press, 1998); David P. Henige, *Numbers from Nowhere: The American Indian Contact Population Debate* (Norman: University of Oklahoma Press, 1998); Stephen J. Kunitz, *Disease and Social Diversity: The European Impact on the Health of Non-Europeans* (Oxford: Oxford University Press, 1996).

implications.⁷ There would be no consensus, and between the middle of the nineteenth and the turn of the twentieth century, science demonstrated its ambivalence and ambiguity towards racial mixing. In turn, this was reflected in Aboriginal policies across Canada, the US, and Australia. Increasingly, mixed-ancestry Natives were identified in both subtle and overt ways in laws and policy that sought to eliminate what was perceived as racial ambiguity.

However, the ways in which they were targeted varied. There was significant ambivalence and ambiguity when it came to defining, administering, codifying, and acknowledging individuals of mixed ancestry as ‘Aboriginal,’ at least in terms of official recognition. At varying times they were seen as models for the process of assimilation, representative of a transitional stage on the path to civilization. At others they served as foils to the hopes and dreams of proponents of civilization, described as the ‘worst of both races’ who only led the good but ignorant from progress along this path.⁸ They were both included in and excluded from legal definitions of Aboriginal, seemingly at random. Blood quantum rules and anti-miscegenation laws, both implicit and explicit, were as frequently transgressed, ignored, or exempted by government officials as they were created and revised. Definitions that were meant to clarify and fix the place of mixed-ancestry Natives as subjects of the state – either as regular citizens or as ‘Aboriginal’ by law – were in constant flux, and officials rarely agreed on how to make rules consistent. From this perspective, the ‘Native problem’ so long claimed the catalyst of policy might be better understood as the ‘problem of mixed-race.’

⁷ See for instance, Reynolds, *Nowhere People*.

⁸ The role of racial mixing in late nineteenth- and early twentieth-century national ideology was a common debate throughout the world. This was not only the case in the places considered in this dissertation, but also in other areas. Throughout Latin America for instance, the role of racial mixing in the constitution of nation-making and national identities was widely discussed and debated. For Brazil, see Euclides da Cunha, *Rebellion in the Backlands (Os Sertões)* (Chicago: University of Chicago Press, 1957 [1902]); for Argentina, see Domingo Faustino Sarmiento, *Facundo: Civilization and Barbarism*, trans. Kathleen Ross (Berkeley University of California Press, 2003 [1845]); for Mexico, see Jose Vasconcelos, *The Cosmic Race / La Raza Cosmica*, Reprint (Baltimore: Johns Hopkins University Press, 1997 [1925]).

The apparent contradictions of mixed-ancestry Native policy can in part be explained by the overarching Aboriginal policies themselves. Aboriginal policy, on the one hand, claimed assimilation as a goal, but on the other, produced a legacy of segregation. The segregation itself might take a variety of forms. It could mean an intentional policy, often under the guise of ‘protection,’ whereby Aboriginals were placed onto isolated pieces of land to be guarded from ‘unscrupulous whites’⁹ until they could fend for themselves; or it could be practiced more informally through social and economic exclusion, even after the legal mechanics of ‘distinct status’ were removed and the so-called assimilation had been achieved. Either way, Aboriginals were barred from participating in the dominant social and economic realms as equals (if they even chose to do so). Consequently, ‘assimilation’ never intended any meaningful kind of integration into the dominant society even where such policies were administered; instead, it meant a process of ‘de-Indianization,’ a kind of continued segregation and subordination whereby Aboriginal peoples were separated as a distinct socio-economic sector, often in specific geographic zones, but without the protection that legal status might offer.¹⁰

⁹ The idea behind this policy was that there was a sector of settler society who would take advantage of Indigenous peoples in trade and land dealings, a policy supported by widely held nineteenth-century ideas about racial superiority. This was often cited as a justification for government intervention in financial and land deals, including trade, between Aboriginals and settlers. This policy was set out in Canada and the US officially by the 1763 Royal Proclamation; in Australia, the absence of such a policy was the result of the lack of protection for Aboriginal land rights. However, Australia also instituted a reserve policy, legislated through various state-level ‘protection’ acts in the late nineteenth and early twentieth centuries, though it was meant as a means of segregating the Aboriginal population to protect it from settler violence. For Canada, see John L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy,” *Journal of Canadian Studies* 8, no. 4 (November 1973): 51–60. For the US, see Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900*, 1st ed (Norman: University of Oklahoma Press, 1975). For Australia, see Peter Read, *A Hundred Years War: The Wiradjuri People and the State* (Rushcutters Bay, NSW: Australian National University Press, 1988).

¹⁰ I refer here particularly to Brooke Larson’s concept of ‘de-Indianization,’ which posits that Indigenous peoples in the Andes were acculturated under the guise of liberalism, but relegated to the fringes of the socio-economic order. Brooke Larson, *Trials of Nation Making: Liberalism, Race, and Ethnicity in the Andes, 1810-1910* (Cambridge, UK: Cambridge University Press, 2004). A similar argument has been advanced elsewhere, focusing especially on the legal elimination of Aboriginal peoples. See especially Palmater, *Beyond Blood* for Canada and M. Annette Jaimes, ed., *The State of Native America: Genocide, Colonization, and Resistance* (Boston: South End Press, 1992) for the US.

Mixed-ancestry Natives were at the heart of this contradiction. They played a significant role in the creation and development of Aboriginal policy in Canada, the US, and Australia, and for a few reasons. Most importantly, they served as a foil for definitions of ‘Native’ which were central to Aboriginal policies everywhere. Yet, legal definitions for ‘Native’ were notoriously vague and ambiguous. With little exception, they did not actually define who constituted membership or how that would be determined, and indeed, could not. The only option was to qualitatively describe when a person *stopped* being Native – a negative criterion that used racial mixing as a qualifier. It would constitute notions of ‘authenticity’ and ‘dilution,’ separating those who were considered ‘real’ Aboriginals from those who were not. Blood quantum rules and pedigrees thus served as cut-off points for official Aboriginality.¹¹ Indeed, racial descent, explicitly or implicitly, became integral to definitions of ‘Native’ in all three countries under consideration here, even if they were not always or consistently observed.

It is especially through attempts to create a definition for ‘Native’ that we begin to find meaning in the ambiguity and ambivalence. I posit that these inconsistencies represent ideological and intellectual debates and struggles over race in colonialism – both those experienced by individuals, including policy makers, and those experienced by academics and experts. I also maintain that this meaning becomes more apparent by examining policy responses to mixed-ancestry Natives. The ways in which colonial authorities dealt with those of mixed ancestry exposes a number of factors: the fallacy of the goal of assimilation, the problem of racial categories and thinking, and the ambiguity and ambivalence government officials felt about mixed-ancestry Natives. It reflects the racial theories that came out of post-Enlightenment science, particularly those that examined the so-called ‘problem’ of racial mixing. Significantly, this occurred in all three countries under consideration here, despite their vastly different

¹¹ See Palmater, *Beyond Blood* for a discussion of this in Canada.

approaches and commitment to the apparent goal of assimilation, and despite their very different ways of attempting to administer mixed-ancestry Natives. Essentially, the contradictions of policy are illuminated by the ‘problem’ of mixed-race. Administrators were less confused about how to categorize ‘real’ Natives, the so-called pure bloods who led traditional lifestyles, than the ‘mixed bloods’ who created the ambiguity and who presented a dilemma for administrators.

Such ambiguities and ambivalences can be understood through three frameworks. The first provides an empirical overview of policy in each of the three countries – introduced here but discussed more fully over the next three chapters. The second outlines some of the major theories and debates about racial mixing among nineteenth-century scientists, highlighting the roots of ambiguity and ambivalence in policy as originating in the ambiguity and ambivalence amongst racial scientists regarding hybridity. The third explains how debates among postcolonial theorists, especially Edward Said and Homi Bhabha, and the gap between the concepts of ‘orientalism’ and ‘hybridity’ as models to explain mixed race and the colonial experience can help us understand the contradictions that seem inherent in Aboriginal policy and its ambivalent discourse about mixed-ancestry Natives. Taken together, policies towards mixed-ancestry Natives, nineteenth-century racial science, and postcolonial theory can provide an explanation for the apparent contradictions and ambiguities laid out at the start of this chapter.

Understanding Aboriginal Policy

Structurally, Native departments, like any other federal department across British and former British colonies, were similar. They were all equipped with a minister, a deputy minister, and a staff of civil servants of varying status who carried out instructions, though perhaps not always with the intended direction of their superiors. The names and positions varied from country to country: in Canada, the Department of Indian Affairs was composed of a hierarchy

that moved from minister, deputy minister, inspector, and finally, to local Indian agent. The US had a similar structure in the Office of Indian Affairs (later, the Bureau of Indian Affairs), though its head was called a commissioner, followed by regional superintendents, and finally, local agents. Terminology differed most in Australia, where the department was usually called the Board for the Protection of Aborigines, its head, a Protector, and its local agents, local or district protectors.¹² In all three, legislation provided the crux of policy directives, though the uniformity and consistency varied over time and place. Canadian policy was framed by one single piece of legislation, the Indian Act, in one form or another since 1850. Australia had similar legislation, though it was enacted at the state level, so policy could vary from state to state. In the US, no single piece of comparable legislation existed, but federal policy directives were frequently detailed in legislation at the start of each new policy phase, often marked by a new presidential regime. Thus, all three countries codified the administration of Native-Newcomer relations as a legal one, albeit with significant differences.

Despite external structural differences, policy in all three countries was based on similar internal ideological premises. Policies were based on what could often be competing notions of access to land and humanitarian concerns. The former required the development of definitions for both citizen and Native; the latter positioned Aboriginal people as “problems” requiring “solutions.” This so-called problem was rarely articulated and could vary over time and place when it was. But, as the 1837 British House of Commons Select Committee on Aborigines emphasized, it was Aboriginals’ lack of participation in the capitalist economy that was particularly irksome for Britain.¹³ This economic difference served only to highlight cultural

¹² Names for departments in all three countries changed over time, but their basic hierarchical structure remained intact.

¹³ Great Britain. Parliament. House of Commons. Select Committee on Aboriginal Tribes and Aborigines Protection Society, *Report of the Parliamentary Select Committee on Aboriginal Tribes, (British settlements.)* (London, Pub.

differences that, for Europeans, were framed by racial ascription. Nevertheless, the ‘solution’ was remarkably similar: policies of assimilation involved education and religious instruction that would bring Aboriginal peoples into the folds of dominant culture. Such efforts would also serve to create a culturally homogenous nation – what many argue was a necessary aspect of nineteenth-century nation-building.

These policies of assimilation were based on a similar set of binaries. First, policy was premised on a racial duality. Natives were viewed in opposition to Newcomers, often without acknowledging the ways in which they mixed or overlapped. This binary was premised on popular racial thinking that racial categories were (or should be) immutable and exclusive. Second, these policies were premised on two opposing principles: assimilation and segregation. Assimilation was based on a belief in stages of civilization, a theory which accompanied nineteenth-century racial thinking. According to this belief, Natives could be changed culturally and absorbed into mainstream, settler society. Segregation, on the other hand, was premised on a belief that Natives either could not be assimilated or could not be assimilated for some time to come. Consequently, they needed to be protected from the less desirable aspects of mainstream society. Any attempted or executed policy fit into one of these two models. Within these binaries, there was no place for those of mixed-race to officially exist, except temporarily as a transitional category while awaiting assimilation. Consequently, mixed-ancestry Natives were targeted for elimination – at least in as much as they constituted an official, permanent category.

for the Society by W. Ball [etc.], 1837), accessed February 27, 2010, <http://archive.org/details/reportparliamen00britgoog>. This report seems to have had a much greater impact in Australia than in Canada or the US. In Canada, the humanitarian concerns about Aboriginal peoples expressed in the report were likely overshadowed by the graver concern for colonial officials at the time: the 1837-8 Rebellions of Upper and Lower Canada. The US, on the other hand, was no longer a British colony by 1837, thus the report would not have made up part of the official response, even if policy makers there might have been otherwise exposed to it. The report and its implications for British colonies are further discussed in Evans, *Equal Subjects, Unequal Rights*, 27–34.

Canada

Canada's Aboriginal policy was, first and foremost, rooted in a tradition that was based upon at least some cooperation. For the first few centuries of contact and colonialism, the fur trade was the defining (although not only) feature of the colonial relationship. This economic cooperation soon led to other alliances, particularly military ones. Britain's territorial wars fought in North America required alliances with Indigenous groups whose interests in the land were important to their survival and cultural perseverance. Initially mutually beneficial, these Native-Newcomer relations were largely friendly and produced a variety of close and intimate relationships, personal, economic, and political.¹⁴ Together, economic and military alliances established a policy of negotiation and pacification, principles which were mostly adhered to in the form of treaty-making. Such a tradition resulted in a comparatively (though not completely) peaceful settler frontier as land surrenders were negotiated.

This relationship changed in the nineteenth century. As both the fur trade's importance (resources) and the need for military alliances declined, the spirit of partnership that had framed many of those earlier Native-Newcomer relationships changed. Increasing emphasis on settlement and nation-building coincided with emerging developments in scientific theories that sought both to explain human difference and justify white domination. As Canada entered Confederation, its policy increasingly became a bureaucratic one that was defined by the needs of the new nation, new settlers, and new goals. It was perhaps a combination of these factors that found 'Indians' constitutionally designated as a federal responsibility when Canada confederated in 1867.

¹⁴ Violence still occurred in Canada. See, for instance Arthur J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing, 1996); Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890 (2nd Edition)* (Vancouver: University of British Columbia Press, 1992); Kenneth Coates, *Best Left as Indians: Native-white Relations in the Yukon Territory, 1840-1973* (Montréal: McGill-Queen's University Press, 1991).

These circumstances gave rise to the next phase, where settlement and nation-building supplanted the prior emphasis on supplying raw materials to Britain. The metropole-colony trade route gradually gave way to an increasingly independent Canada as Britain turned its attention elsewhere. This phase also ushered in an era of dispossession and coercive assimilation, largely reflecting a period of Aboriginal displacement as large expanses of land were exchanged for much smaller reserves and narrow privileges. In most of Canada, this was accomplished through the negotiation of treaties which would see the surrender of most of what is now Canada.

This phase also witnessed the increasing bureaucratization of 'being Indian.' The Indian Act, introduced during Canada's coercive era, was a single, lengthy piece of legislation which functioned as the sole legal authority for relations between the state and Aboriginal peoples. It defined 'Indian,' set terms of reserves, and a host of other regulations. In practice, it governed almost every aspect of Aboriginal lives, and left a legacy of legalized subjugation. What is particularly relevant here is the manner in which it defined 'Indian,' and the impact that had on people of mixed ancestry, a topic of Chapter Four.

The Indian Act also claimed control over lands reserved exclusively for Indian occupation and use. The impetus for reserves was setting aside land for the sole use and occupation of its original inhabitants. Land cession treaties created reserves, inalienable tracts of land reserved for the use of First Nation communities.¹⁵ In exchange for lands surrendered to Canada, bands identified small areas of land for their sole use. However, these reserved lands became sites of aggressive assimilation attempts within a very few short years. They also established a relationship between race and place: those who lived on reserves were deemed Indians by law, and subject to the Indian Act. Ultimately, reserves and identity were bound

¹⁵ However, reserves on the BC mainland were not created by treaties. For a discussion of BC's Aboriginal policy, see Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2003).

together in Canadian law. Non-Indians could not, by law, reside on a reserve. Hence, since they served as the land base to Aboriginal communities, to be denied access to the reserve was to be physically severed from one's community. In this way, reserves defined race – or as sociologist Sherene H. Razack puts it, “place becomes race through the law.”¹⁶ These geographical enclaves, then, became important markers in the designation and ascription of racial identity. Reserves, the Indian Act, and assimilation formed a trifecta that would provide the means by which such identities could be granted or denied.

Scrip was another major aspect of Canadian policy that became an important means of racial ascription. A coupon redeemable for land or cash, it was the only policy designed to deal with Halfbreeds (a term used rather liberally and without distinction during the execution of this policy). Scrip is important, not just because it applied to the Métis, but because it was eventually granted to any person of mixed ancestry. It also became a legal instrument through which mixed-ancestry Natives could be separated and excluded from the category of ‘Indian. By taking scrip, a status Indian became ‘enfranchised,’ thus manipulating legal-racial categories for the purposes of eliminating ambiguity. To take scrip was to make a declaration that one was, in fact, not an Indian. Indeed, applicants were required to sign an affidavit to that effect.

Early twentieth-century shifts in attitudes and priorities resulted in significant shifts in Aboriginal policy. The end of the scrip policy in 1921 meant the end of the federal government's formal relationship with Métis and non-status Indians. The Indian Act also underwent major changes around the same time as protests from Indigenous groups across the country forced policy makers to rethink and remove some of the more restrictive clauses of the legislation, particularly those that criminalized cultural practice. But the precedents set by those earlier

¹⁶ Sherene Razack, ed., *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002), 1.

policies had lasting implications for the legal identities of mixed-ancestry Natives. The specific ways in which these policies applied to those of mixed ancestry indicates how deeply entrenched ideas of race and mixed race were in policy-making. They also indicate how committed policy makers were to eliminating the ambiguity that mixed-ancestry Natives introduced to the framework of policy that was based on a dichotomy. These policies worked in concert, albeit unintentionally, to eliminate mixed-ancestry Natives as official Indians, or at least eliminate them as ambiguous ‘others.’

The United States

Aboriginal policy in the US began with some of the same basic premises upon which Canadian policy was built. Parts of the US also experienced the cooperative relationships produced by the fur trade, though earlier settler demands for land could undermine those benefits. Prior to American independence, Aboriginal policy in the Thirteen Colonies operated under the same British laws that were in effect in what became Canada. After Independence, the US federal government played the primary role in managing relationships between Natives and Newcomers.¹⁷ A specifically American policy began with the ‘Trade and Intercourse’ acts, which were intended to protect Aboriginal people in trade and land deals. However, the extent and severity of the ‘land grab’ experienced in the US drastically shifted the course policy would take there. US policy placed far more emphasis on the idea of segregation as a means to avoid and resolve what were often land-centered Native-settler conflicts and used treaties as a method of achieving peaceful segregation. But ultimately, this approach failed: segregation was not a viable option amidst the extensive pressures of a settler population demanding more land, and it

¹⁷ The Trade and Intercourse Acts, passed between 1790 and 1834, directed Indian policy in the period immediately following Independence. See Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Lincoln: University of Nebraska Press, 1970).

was decidedly not peaceful. The protected status of reserved land was under constant threat, and public demands usually won out.

As similar as Canadian and American policies might seem, two fundamental factors distinguished the US. First was the recognition of tribal sovereignty; second was the influence of a history of slavery and anti-miscegenation laws. The US government acknowledged tribal sovereignty over internal matters, until at least 1871 when the Indian Appropriation Act changed the Aboriginal-state relationship. But until then, internal matters, and especially identity and membership, were the decisions of tribal authorities, not government officials. The well-known 1831 *Cherokee Nation v. Georgia* court ruling established this important legal principle in which tribes were dubbed “domestic dependent nations.”¹⁸ Tribal authority was further confirmed in the 1832 case, *Worcester v. Georgia*, where the court ruled that “all the rights which belong to self government have been recognized as vested [in the tribes].”¹⁹ These two rulings jointly confirmed the pre-existing nature of the relationship between tribes and the US federal government, where relations were conducted with an understanding of mutual political sovereignty.²⁰ The legal recognition of tribal sovereignty had a significant effect in American Aboriginal policy: since recognized tribal authority included decisions about membership,

¹⁸ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). Precisely when and how this sovereignty was actually recognized and articulated by the US federal government is a matter of debate. Indeed, as legal scholar William W. Quinn, Jr., argues, “the historical record reveals a consistent uncertainty and even confusion on the part of the several branches of the government of the United States about its relations with and legal responsibilities toward certain Indian tribes throughout the nineteenth and early twentieth centuries.” This uncertainty, as Quinn himself admits, is more in regard to the lack of a concise and uniform legal definition of ‘tribe’ or ‘sovereignty’: both connected to the lack of definition for ‘Indian. And without a uniform definition for Indian, there would be even more confusion over where mixed-ancestry Natives would fall. William W. Quinn, “Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept,” *The American Journal of Legal History* 34, no. 4 (October 1, 1990): 331–364.

¹⁹ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 580 (1832).

²⁰ Frank Pommersheim, *Broken Landscape: Indians, Indian Tribes, and the Constitution* (Oxford: Oxford University Press, 2009); Robert Odawi Porter, *Sovereignty, Colonialism and the Indigenous Nations: A Reader* (Durham, NC: Carolina Academic Press, 2005).

American law had no need to develop a comprehensive legal definition of ‘Indian.’ These conditions would have implications for individuals of mixed ancestry.

The second significant feature of US Aboriginal policy was the influence of slavery and the precedents it set for race laws: anti-miscegenation and blood quantum. While race laws originated with Black slavery, anti-miscegenation laws extended well beyond the black/white binary. They were also attempts to racially segregate Native and Asian populations from settler societies, especially in the west during the late nineteenth and early twentieth centuries.²¹ Indeed, as late historian Peggy Pascoe states, “By the turn of the century, miscegenation laws served as a commonsense method of policing the racial borders of white supremacy.”²² However, works on anti-miscegenation laws do not always contemplate the importance of the nineteenth-century racial hierarchy in considering the impact these laws had on various populations.²³ Laws were not evenly applied to all racial groups. As Pascoe notes, marriages among whites and Indians were often allowed despite laws saying otherwise – a degree of latitude not extended to Blacks. Officials saw Native Americans as more ‘civilized,’ and thus, were less likely to disallow those mixed marriages.

As anti-miscegenation laws proved unenforceable, blood quantum was another way in which racial borders were monitored. Also originating in slavery, blood quantum, the mathematical formulation of racial status, came to be seen as the major qualifying criterion for Native American identity in the US. However, this should not be taken to the exclusion of its importance in other countries. Despite popular belief otherwise, the idea of descent as a factor in

²¹ For an excellent discussion of how anti-miscegenation laws extended to racial others in the US, see Pascoe, *What Comes Naturally*.

²² *Ibid.*, 86.

²³ Pascoe argues that marriages between Indians and whites were “sheltered by two contradictions:” one was that courts upheld these marriages, despite laws against them; the second is that state laws regarding marriage contradicted federal jurisdiction over Indians. *Ibid.*, 100.

legal Aboriginal identity is not entirely unique to the US. Both Canada and Australia employed similar policies, although definitions tended towards qualified rather than quantified measurements. Criteria like ‘ancestry’ and ‘descent’ in definitions, such as the Indian Act in Canada and the Native Title Act in Australia, produced the same end: the inclusion and exclusion of individuals from official Aboriginal status based on the perceived degree of racial purity. Nonetheless, in the US, blood quantum has been employed expressly and quantitatively in Native American policy, and continues to comprise the basis of legal identity.²⁴

Despite this importance, the extent of its application must not be overstated, nor should it be thought of consistently across time. The history of blood quantum has often been misrepresented by the application of post-1934 definition onto pre-1934 circumstances. Historically, the degree of blood required for official recognition has not remained stable. Not only did it change over time, but it also changed across areas of law. Criminal law and taxation, for instance, created one set of rules while allotment created others. Each of these definitions were applicable only to the specific circumstance for which they were created, and not until the 1934 Wheeler-Howard act was a uniform criterion of blood quantum established.²⁵ But, as Chapter Four will show, a less formal precursor to the strictly quantitative blood quantum of the twentieth century was a central feature to nineteenth-century racial designation and ascription in policies like allotment.

Blood quantum, even if unevenly applied and not official sanctioned, proved particularly important after the 1870s. By then, attitudes about the best course of policy to pursue were changing. Both government officials and the public increasingly moved towards a consensus that

²⁴Ryan W. Schmidt, “American Indian Identity and Blood Quantum in the 21st Century: A Critical Review,” *Journal of Anthropology* 2011 (2011): 1–9.

²⁵ Paul Spruhan, “A Legal History of Blood Quantum in Federal Indian Law to 1935,” *South Dakota Law Review* 51 (2006): 1.

segregation, even temporary, was no longer possible. Public resentment over the reservation of what were seen as lands which should be made available to potential settlers was also increasing. Allotment, the subdivision of communal tribal lands into individual plots, became the proposed solution starting in 1887. But land demands were always tempered at least to some degree by humanitarian concerns, and the allotment policy demonstrated how Aboriginal policies were often a product of the convergence of philanthropic and economic goals. Humanitarian concerns demanded a policy that would relieve Indians of their ‘plight,’ and economic aims sought to free reservation lands for agricultural settlement and other purposes that suited the national economic interest, like railways, mining, and development.²⁶ Allotment would meet the goals of both of these aims with rapid assimilation – considered the ‘humanitarian’ course of action for a ‘dying race.’

Like most Aboriginal policies, the goals and practice of the allotment policy were contradictory. Under this policy, individual tribal members would be granted land in severalty, and title would eventually be given after a period of ‘observation’ (usually 25 years). The surplus reservation land would be thrown open for sale and settlement, the proceeds from which would be divided among eligible tribal members. However, allotment was based on the presumption of ‘competency’ – that is, that the Aboriginal applicant had reached a state of ‘civilization. This policy was at odds with anthropological theory of the day, which held that in order to be ‘civilized,’ Indians had to pass through several stages. Allotment skipped these stages, immediately resulting in land ownership. In reality, the policy reflected a shaky compromise between those humanitarian concerns and settler demands to open land.²⁷ But for the purposes here, it was also important in how it divided the ‘competent’ from the ‘incompetent’: according

²⁶ See especially Otis, *The Dawes Act*.

²⁷ See Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900*, 1st ed. (Norman: University of Oklahoma Press, 1975).

to an inconsistently applied blood quanta rule. Allotment would prove to be intricately connected with the emergence of the idea of mixed race in the US, and how individuals of mixed ancestry would be identified by the state.²⁸

Allotment and an official policy of assimilation ended with the 1934 Howard-Wheeler Act, often referred to as the Indian Reorganization Act. The act was a response to the 1928 Meriam Report, “The Problem of Indian Administration,” which exposed inadequacies of Indian policy and the deplorable conditions under which most Natives lived. This, according to its author, John Collier, was a clear result of previous policy. Collier, a “cultural pluralist who believed that Indian cultures had much to teach Americans and that they needed to be protected, preserved, and reinvigorated,” was soon after appointed commissioner of the BIA.²⁹ It was then that he introduced the ‘Indian New Deal,’ a policy that purported self-determination and self-government by organizing contemporary tribal governments. The policy also included improvements to education and the promotion of traditional crafts and arts. More importantly, it created a uniform definition for ‘Indian. For the first time, ‘Indian’ was defined in a federal piece of legislation of general application – as one who lived on a reservation and was a tribal member. It also introduced for the first time a uniform blood quanta criterion, thus ending any debate over the identity of mixed-ancestry Natives – at least in federal law.

²⁸ Carlson, *Indians, Bureaucrats, and Land*; Paul W. Gates, “Indian Allotments Preceding the Dawes Act,” in *The Frontier Challenge: Responses to the trans-Mississippi West*, ed. John Garretson Clark (Lawrence: University Press of Kansas, 1971), 141–170.

²⁹ Donald L. Fixico, “Federal and State Policies and American Indians,” in *A Companion to American Indian History*, ed. Philip Deloria and Neal Salisbury, New edition (Malden, MA: Wiley-Blackwell, 2004), 385.

Australia

Unlike the Canadian and American centralized federal systems, Australia's Aboriginal policy was administered by individual states.³⁰ The colonial government had authority over Aboriginals until a territory achieved statehood and took over its own administration. This meant that, at least to some degree, policy could vary greatly from state to state.³¹ But in reality, state policies were remarkably similar. This is explained, not only by the perhaps somewhat typical patterns that are part of the colonial experience, but by the informal practice of state governments consulting with each other on Aboriginal policy.³² While there was no formal mechanism for this sharing until the twentieth century, particularly when state officials began meeting at national Native Welfare conferences starting in 1937, the sharing of information that occurred before then ensured that policies exhibited enough consistency to warrant discussion on a national level.

The phases witnessed in Canada and the US also frame the Australian historical experience. However, Australia differed in three fundamental ways. First, it experienced widespread settler violence during its contact phase. Settler land appropriations and misuse of water holes were high on the list of incursions which produced a cycle of attacks and retaliations resulting in a protracted conflict phase. Second, the economic partnerships which relied on Aboriginal goodwill, skills and labour that occurred in other parts of the world (such as with North America's fur trade) occurred in Australia to a far lesser extent.³³ Granted, there was

³⁰ This was the case until 1967, when Aboriginal affairs became a federal responsibility. The Northern Territory was administered by South Australia until 1911, when the Commonwealth took over the operation of Aboriginal affairs there.

³¹ It was not until the 1967 Constitution that the Commonwealth received the necessary authority to take over Aboriginal affairs for the entire country, and not until 1973 did they actually practice this control.

³² There are numerous examples in the archival records that key officials, especially chief protectors, consulted with each other on policy issues and/or consulted each other's legislation as models for their own. Kristyn Harman, "Protecting Tasmanian Aborigines: American and Queensland Influences on the Cape Barren Island Reserve Act 1912," *Journal of Imperial and Commonwealth History* [forthcoming].

³³ There are notable exceptions. Reynolds, for instance, describes the ways in which Aboriginal people assisted in the colonization of Australia through a wide variety of roles, including guides and interpreters, especially in the early part of colonization. Henry Reynolds, *With the White People* (Ringwood, Vic.: Penguin Books, 1990).

reliance on Aboriginal labour as the cattle, pearling, and fishing industries took hold, especially in the north.³⁴ But the implications did not reach the same status to either the Australian economy or the demands on Aboriginal labour. For certain, reliance on Aboriginal labour did not ensure a mutually beneficial relationship, but it did shape the experience of colonialism and the later course of Aboriginal policy. Third, there were no military alliances between Natives and Newcomers, as there were in both Canada and the US. There was little competition for Australia among European nations during the early years of contact as had been the case in North America, where French, Spanish, Russian, and later, American interests competed with Britain for control over Aboriginal territories. Thus, the kinds of alliances that were forged in Canada and the US were absent in Australia. This provided yet another reason why early relations between Natives and Newcomers were poor.

Newcomers to Australia generally did not recognize Aboriginal rights to the land. Perhaps because of a racial stratification that placed Aboriginal people in Australia as ‘blacks’ lower on the hierarchy than North American Aboriginals, perhaps the lack of apparent systematic agriculture, or perhaps because of the lack of an economic partnership that was witnessed in North America, land was taken based on the mistaken belief that it was not being used. *Terra nullius*, an international legal concept meaning ‘land belonging to no one,’ justified the appropriation of land and the settler violence that accompanied it. But this was not the only cause of the violence. Unlike other areas colonized by European powers, settlement in Australia did not occur gradually or in increments. In Canada, for instance, there were many decades, and even centuries, when Europeans visited, first seasonally, then gradually, permanently as traders. Only after relations were well-established between Natives and Newcomers were any real efforts made at European settlement. Consequently, colonialism occurred much more progressively in most

³⁴ On this point, see especially Reynolds, *With the White People*; and McGrath, *Born in the Cattle*.

places in North America. But in Australia, there were no prior seasonal visits, save for a few areas where whaling occurred (such as Tasmania). The first permanent arrivals on Australian shores were settlers and convicts, who, save for a few individuals, had no need or desire to establish reciprocal relations with Aboriginal people. Contact in Australia, then, was precipitated solely for the purposes of colonization, not economy.³⁵

The varying experiences and different trajectories of colonization throughout history make periodization difficult. The initial violent period ended shortly after contact in pre-urban areas, such as around Perth, Sydney, Brisbane, and Melbourne where settlement occurred more rapidly. But it lasted well into the twentieth century in some regions where settlement occurred later, like northern and central Australia – a process not dissimilar from contact experiences and patterns in Canada’s north.³⁶ Following the initial period of violence, the nature of contact between Aboriginal people and Newcomers came to be defined by systematic government administration. Academics often divide this period into three phases: protection, assimilation, and integration.³⁷ In reality, there was more overlap than separation among them, as in the US. Protection and dispossession or assimilation and segregation were not always clearly discernible from each other. Moreover, approaches to Aboriginal policy were distinguished more by separate policies for ‘full bloods’ and ‘half-castes’ than they were by successive periods. Officials believed that ‘pure bloods,’ incapable of assimilation in the short term, should be segregated, while mixed-ancestry Natives should be assimilated. Beliefs about the association between ‘civilization’ and blood quantum had a significant effect on the course of policy, and thus

³⁵ See especially Henry Reynolds, *Frontier* (St. Leonards, NSW: Allen & Unwin Academic, 1997).

³⁶ See Kerry M. Abel, *Drum Songs: Glimpses of Dene History*, 2nd ed. (Montréal: McGill-Queen’s University Press, 2005); Ray, *I Have Lived Here Since the World Began*; Coates, *Best Left As Indians*.

³⁷ See Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand* (Vancouver: University of British Columbia Press, 1995), especially Chapter 2.

complicate the orthodox understandings of how policy evolved. In any case, nothing nearing a consensus was achieved until around the 1940s.

Aboriginal policy in Australia, then, was premised on a much different historical context and contact experience than what occurred in Canada and the US, but experienced the same dual policies of segregation and assimilation. In reality, there was little distinction in the attitudes underlying them. The 1837 British Committee on Aborigines which provided so much of the basis to Aboriginal policy in the colonies, itself recognized that the goal of protection was assimilation, which was to, “consider what measures ought to be adopted with regard to the Native Inhabitants of Countries where British Settlements are made, and to the neighbouring Tribes, in order to secure to them the due observance of Justice, and the protection of their Rights; to promote the spread of Civilization among them; and to lead them to the peaceful and voluntary reception of the Christian Religion.”³⁸ With some exception, namely a brief period when some officials believed Aboriginals were dying out, the underlying intent of both phases was the assimilation of Indigenous peoples into the general population. How this would be achieved is what changed most notably over time.

Policy in Australia was governed by state-level pieces of legislation, which would grant authority over Aboriginal people to a department typically called the Board of Protectors. The legislation, usually called protection acts, was similar in design and intent to the Canadian Indian Act, though Australia placed tighter restrictions on labour, marriage, and movement. These laws also designated reserved tracts of land, though not like the reserves of Canada or the US. Instead, they were government-run and -controlled rural enclaves where Natives were to be ‘protected’

³⁸ Great Britain. Select Committee on Aboriginal Tribes and Aborigines Protection Society, *Report of the Parliamentary Select Committee on Aboriginal Tribes*, 1837.

from whites while trained and educated for assimilation into the dominant society.³⁹ Aboriginal people did not hold title or any exclusive usufructuary rights to these tracts, and they were gradually and eventually dissolved.

States introduced their own protection acts at varying times between 1869 and 1911, but they shared particular themes. As was the case elsewhere, assimilation and segregation were evident in these acts. But unlike Canada and the US, Australia's policy of assimilation through biological absorption was clearly and expressly stated in its legislation and policies. One of the most significant sections of the protection acts, for the purposes of mixed-race Aboriginal people, was in regard to definitions. The acts defined 'Aboriginal,' a definition which often included 'half-castes' or some indication of blood quantum. In addition, there was a clear gendered aspect to race that was not articulated in legislation in either Canada or the US. The age of minority, for instance, was lower for females than it was for males. As will be discussed in Chapter Six, the belief among administrators of 'licentiousness' among Aboriginal females, including the very young, provided an additional element to racial mixing in Australia.

Another unique feature of Australian legislation was its administration of Aboriginal labour. Cheap or free by law, it was an integral aspect of the Australian economy, especially in the north or other remote areas where the cattle and pearling industries were the primary economic mainstays.⁴⁰ However, it was also a significant 'contact zone':⁴¹ both the private setting of domestic labour and the isolated nature of rural-industry labour meant unchecked opportunities for 'miscegenation' that exposed the competing goals of Aboriginal policy and

³⁹ There were also cases of segregation on Church-run missions, which effectively operated in the same way that government reserves did.

⁴⁰ See for instance, Ann McGrath, *Born in the Cattle* and Penelope Hetherington, *Settlers, Servants & Slaves: Aboriginal and European Children in Nineteenth-century Western Australia* (Perth: UWA Publishing, 2002).

⁴¹ Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation*, 2nd ed. (London; New York: Routledge, 2008).

labour needs. Each individual had a contract with their employer which had received the consent of the state chief protector. These conditions only highlighted the fundamental contradictions of Aboriginal policy: labour conditions encouraged the very mixing that many administrators sought to eliminate through the regulation of Aboriginal people.

Here was one of the ways in which mixed-ancestry Natives would be targeted in Australian policy. Aboriginal individuals of mixed ancestry were often removed from their Aboriginal homes and placed in government and mission-run educational institutions where they were ‘trained’ to take their place in white society – most often as domestic labourers to white homes for females or agricultural and station labourers for males. The legacy left behind by this coercive policy has been the subject of much investigation, debate, and controversy in recent decades as the public, government officials, historians, and Aboriginal people themselves come to terms with the violence of their past. While the removal of Aboriginal children from their homes was a part of policy in Canada and the US,⁴² mixed-ancestry children were the specific focus in Australia – a factor that is unique to that country.

Concerns about the rising numbers of mixed-ancestry Natives, as noted at the start of this chapter, were especially prevalent in Australia. Its policy of assimilation in terms of biological absorption emerged around the end of the nineteenth century as officials and the public became increasingly aware of mixed populations. As in Canada and the US, administrators were also gradually realizing that the ‘doomed race’ theory that had promoted apathy towards frontier violence was in fact, false. The apparent increase in the so-called ‘half-caste’ population was a cause for alarm for colonizers, for reasons discussed in Chapter Six, and had a major impact on the direction of policy. Officials, however, also took these changing demographics as proof that a

⁴² In Canada and the US, child removal was a product of residential schools and of child welfare policies, the latter especially after the middle of the twentieth century. See especially Armitage, *Comparing the Policy of Aboriginal Assimilation*.

policy of biological absorption was not only possible, but could provide the answer to what they perceived as the ‘Native problem. This policy was, for the most part, pursued aggressively, inhumanely, and without the consent of its subjects. Incentives and coercion were used to aid in this process of assimilation, which included not only the above mentioned removal of children, but also the legal ‘de-Indianization’ through the use of exemption certificates – a kind of enfranchisement that eliminated one’s legal status as an Aboriginal person, and accorded them all the rights of citizenship. In addition, reserves could be shut down: stores would be closed, services would be terminated, and building maintenance would cease. In short, the government-created reserves that had become Aboriginal communities were officially abandoned.

Officially, the policy of assimilation ended in 1967. A period of civil rights rallying culminated in a referendum that year whereby an overwhelming majority of Australians voted for constitutional changes that would address the legal discrimination Aboriginal Australians had faced. At that point, states revoked or drastically changed their protection acts, turning their attention to the socio-economic disparity that had emerged out of the policy of assimilation. As had been the case elsewhere, such policies had displaced and dispossessed uncountable numbers of mixed-race Aboriginal people. Exclusion from legal definitions and Aboriginal reserves and other communities had resulted in the separation of individuals from their communities.

Racial Science

Unravelling the meaning behind the contradictions in Aboriginal policies necessarily begins with an examination of the ideological influences that contributed to their make-up. As many historians have aptly pointed out, Aboriginal policies were formed around pragmatic concerns, such as the demands of settlers, budgetary considerations, and nation-building goals, to name a few. Humanitarian interests also played a significant role in government decisions about

Aboriginal affairs, although more so in Australia than in either Canada or the US. Nonetheless, underlying any motivation for Aboriginal policy were the ideological developments of the nineteenth century around race and science. Any consideration of Aboriginal policies, and of their colonialist context, must begin there.⁴³

The genealogy of race stems back centuries, but as a modern idea, it began during the Enlightenment.⁴⁴ In the eighteenth century, the study of nature had gradually begun to include the study of humans. Enlightenment thinkers, influenced by the advent of reason, rationality, and scientific thinking as the dominant paradigms of knowledge, came to see humanity as part of the same systematic study of nature, from which modern science developed. By most accounts, racial thinking was thus a product of the Enlightenment and the scientific, rationalist approach to life and nature whereby all knowledge about the world could be organized into hierarchical classificatory systems.⁴⁵ This taxonomic approach began with the premise that all life could be organized into a tiered system of types – a common notion in science today, but still a developing method in the eighteenth century.⁴⁶ Revolutionized by Swedish botanist Carl Linnaeus, taxonomy extended to ideas of humans as classifiable.⁴⁷ Gradually, racial categories

⁴³ See for instance, C.A. Bayly, “The British and Indigenous Peoples, 1760-1860: Power, Perception and Identity,” in Martin Daunton and Rick Hapern, eds, *Empire and Others*, 19.

⁴⁴ Although there were various theories about human difference and superiority prior to the Enlightenment, Hannaford is not alone in arguing that modern race was not conceived until the eighteenth century. Ivan Hannaford, *Race: The History of an Idea in the West* (Washington, D.C: Woodrow Wilson Center Press, 1996), 183.

⁴⁵ There is some debate as to the origins of modern race. While it is largely accepted as a product of the Enlightenment, some argue that its origins are much earlier. See for instance, Maria Elena Martinez, *Genealogical Fictions: Limpieza De Sangre, Religion, and Gender in Colonial Mexico* (Stanford: Stanford University Press, 2008).

⁴⁶ The taxonomy of knowledge is considered to have begun with *Encyclopédie* by Jean le Rond d'Alembert and Denis Diderot, first published in 1751. While a taxonomic approach was, indeed, applied to specific fields prior to this publication, it was the *Encyclopédie* that is considered to have introduced taxonomy as an approach to knowledge in general. See David Adams, “The Systeme figure des connaissances humaines and the structure of knowledge in the Encyclopedie,” in *Ordering the World in the Eighteenth Century* (Basingstoke [England] ; New York: Palgrave Macmillan, 2006).

⁴⁷ Linnaeus first proposed a human racial taxonomy in 1735 in his first edition of *Systema Naturae*, which he refined in later editions. Carl von Linnaeus, *Systema Naturae, 1735* (B. de Graaf, 1964). For a discussion, see Mary Gribbin, *Flower Hunters* (Oxford; New York: Oxford University Press, 2008).

began to emerge, first as vague types, but by the end of the Enlightenment, as more definable hierarchical classifications based on visible biological factors, or ‘phenotype’. The Enlightenment’s introduction of the scientific method as the paramount means of gathering evidence combined with Linnaeus’s taxonomic approach produced what seemed a verifiable, observable and valid explanation for human difference: race. Although these approaches were highly contested, they survived those debates past the Enlightenment and came to form the basis of post-Enlightenment science.⁴⁸

Two significant changes took place in the mid-nineteenth century that made race as a so-called biological fact a dominant paradigm in the study of human difference. First was a complex shift in the intellectual climate as race became more important in explaining human difference: experts were changing how they thought about race. Increasingly, race came to be viewed as a function of biology: what cultural geographer Kay Anderson calls the “biologisation” of race.⁴⁹ This shift was marked by Robert Knox’s 1850 publication, *Races of Men*,⁵⁰ and Charles Darwin’s *On the Origin of Species* shortly thereafter in 1859.⁵¹ *Races of Men* was the first comprehensive publication of the ideas about racial classification that had been developed over the previous half century and was considered the authority on race at the time. Darwin’s better-known work introduced both evolution and natural selection, two concepts which would come to define racial science in ways that its author had likely not intended.⁵² Together, these two works

⁴⁸ There was protracted debate over the validity of a taxonomic approach. Critics saw it as superficial and unnatural and thus inappropriate for the study of nature. For a discussion of these debates, and especially attacks against Linnaeus, see John C. Greene, *The Death of Adam: Evolution and Its Impact on Western Thought*, 2nd ed. (Ames: Iowa State Press, 1996); Julia V. Douthwaite, *The Wild Girl, Natural Man, and the Monster: Dangerous Experiments in the Age of Enlightenment* (Chicago: University of Chicago Press, 2002).

⁴⁹ Kay Anderson, *Race and the Crisis of Humanism* (London: Routledge, 2007), 23.

⁵⁰ Robert Knox, *The Races of Men: A Fragment* (Henry Renshaw, 356, Strand., 1850).

⁵¹ Charles Darwin, *On the Origin of the Species by Means of Natural Selection: Or, The Preservation of Favoured Races in the Struggle for Life* (John Murray, 1859).

⁵² While the theory of evolution had been introduced by others prior to Darwin’s own work, it was specifically the introduction of evolution together with natural selection that had a specific and unique impact. For a discussion of

would clinch the already-growing idea that established race as both natural and hierarchical. In addition to these advancements in science, there was a decreasing emphasis on other ways of thinking about race. In pre-nineteenth-century racial thought, nation, class, and gender were seen as defining characteristics of race. But while race as biology was gaining ground, these other ways of thinking about race were losing it. Race was no longer solely tied to the nation of one's birth or ancestor.⁵³ Race as phenotype – visually distinguishable markers like skin colour or hair type – became the dominant view of race in the colonial world.

Second was the professionalization of science, and along with it, the legitimization of the idea of race.⁵⁴ What resulted was a coherent body of ideas that could be organized, even if loosely so, under the subcategory of racial science. While such ideas were wide and varied, they had, according to sociologist Ali Rattansi, four basic factors in common: first, humankind could be divided into categories; second, these categories were defined by physical attributes which served as racial markers; third, race was associated with social, cultural, and moral traits; and fourth, races could be stratified.⁵⁵ The widespread acceptance among scientists of these basic 'facts' about human difference and its connection to broader ideas in science, especially in the categorization of all life, coalesced within the larger discipline. As sociologist C. Matthew Snipp notes for the US, for instance, "By 1850...most scholars agreed that a racial hierarchy existed and that the hierarchy was destined by nature."⁵⁶ In turn, the study of race and culture became intertwined in new ways: the relationship between biology and character was formalized. Within

the history and theory of evolution, and Darwin's specific impact, see Stephen Jay Gould, *"The" Structure of Evolutionary Theory* (Cambridge: Harvard University Press, 2002).

⁵³ Rattansi, *Racism*, 51.

⁵⁴ See, for instance, George Grantham, "The Institutionalization of Science in Europe, 1650-1850," in *Economic Evolution and Revolution in Historical Time*, ed. Paul Webb Rhode, Joshua L. Rosenbloom, and David F. Weiman (Stanford: Stanford University Press, 2011), 51–85.

⁵⁵ Rattansi, *Racism*, 31.

⁵⁶ C. Matthew Snipp, "Racial Measurement in the American Census: Past Practices and Implications for the Future," *Annual Review of Sociology* 29 (2003): 565.

a few decades, this study of human difference began developing into social science – specifically, the practices of ethnology and anthropology.⁵⁷ However, the acceptance of the idea and social meaning of race did not remain confined to academia: the apparent simplicity and logic of these ideas made them widespread among the public, too, and developed into the ‘common sense of race’ that became so pervasive.⁵⁸ Granted, the idea of race would always be contested and debated, but opposition did not preclude its rise to hegemony. Race, then, became common knowledge *and* common sense, moving from the realm of a few select and specialized academics to that of broader public knowledge. So, rather than a marked shift in belief and ideology, 1850 signalled a consolidation of the scattered ideas about human difference that already existed.

‘Whiteness’ as the apex of this hierarchical structure was also part of this mid-nineteenth century science. Creating the idea of race was not only about creating a racial ‘other’; it was also about creating the ‘self. In terms of a budding racial science, that meant creating an increasingly exclusive definition of ‘white’ against which racial ‘others’ would serve as foil. As the nineteenth-century came to a close, ‘whiteness’ was fast becoming synonymous with ‘European,’ and especially, western Europe in the context of a globally dominant western colonialism.⁵⁹ ‘Other’ peoples, both those white and non-white, were marginalized as part of this process. But just as categories like ‘halfbreed’ or ‘mixed-blood’ were implied, imagined,

⁵⁷ For Canada, see Regna Darnell and Julia Diane Harrison, *Historicizing Canadian Anthropology* (Vancouver: University of British Columbia Press, 2006); Robert E. Bieder, *Science Encounters the Indian, 1820-1880: The Early Years of American Ethnology*, 1st ed. (Norman: University of Oklahoma Press, 1986); McGregor, *Imagined Destinies*, 1997.

⁵⁸ The notion of ‘common sense racism’ is a term generally used in contemporary studies. However, there is ample evidence about and literature on pervasive and widespread public attitudes about Indigenous peoples. See for instance, Daniel Francis, *The Imaginary Indian: The Image of the Indian in Canadian Culture*, New edition (Vancouver: Arsenal Pulp Press, 2011); Elizabeth Furniss, *The Burden of History: Colonialism and the Frontier Myth in a Rural Canadian Community* (Vancouver: University of British Columbia Press, 1999); Jacquelyn Kilpatrick, *Celluloid Indians: Native Americans and Film* (Norman: University of Nebraska Press, 1999).

⁵⁹ See for instance, Alastair Bonnett, *White Identities: Historical and International Perspectives* (Harlow, England: Prentice Hall, 2000).

ambiguous, and unstable, so was 'white. As Alfred J. López states it, "Whiteness is not, yet we continue for many reasons to act as though it is."⁶⁰ Indeed, the very instability of 'white' as a category representative of power, authority, and privilege would propel the machinery of racial construction as an effort to maintain that dominant position. Authority, always challenged and contested, would never be stable or permanent.

Indeed, the ideas about race that developed in the nineteenth century were highly contested, ambiguous, and debated. The question of human origins was at the centre of conflict between Christian beliefs and the desire for political and economic domination. The difficulty was justifying white superiority while remaining true to Christian principles, especially the bible's version of genesis. Two theories emerged: monogenism, the belief in a common origin, and polygenism, the belief in multiple origins. The prevailing belief among scientists demonstrated their Christian values: the bible supported the theory that all people were descended from Adam and Eve. Yet, European notions of superiority could not fully accept the Indian as truly equal, and common origins conflicted with observable human difference. So for Christians to balance their religious beliefs with their empirical evidence (and belief in cultural superiority), differences among races had to be explained by other means.

Two popular explanations emerged: environmentalism and progress. The first argued that differences in environment had produced physical and intellectual differences over time. Agassiz, for instance, purported a theory of 'racial geography': that races (and all species, for that matter,) were identifiable by geographic zones. The combination of climate and the unique flora and fauna of each region produced unique human species, or races. For example, the Inuit were considered a separate race from the Indians of North America since they resided in the

⁶⁰ Alfred J. López, "Introduction: Whiteness after Empire," in Alfred J. López, ed., *Postcolonial Whiteness: A Critical Reader on Race and Empire* (Albany: State University of New York Press, 2005): 1.

Arctic – a different geographic zone.⁶¹ The second focused more on technological advancement, arguing that all humans must progress through a series of sequential stages of civilization. Aboriginal peoples, the argument went, were just in an earlier stage of development than Europeans. Lewis Henry Morgan, for instance, proposed a three-stage series, each with three further ‘subperiods,’ where civilization was measured by technology such as agricultural methods, metallurgy, and the development of tools.⁶² Either way, theories remedied the conflict between religious conviction and ethnocentrism: Aboriginal people were deemed inferior, but with the potential to progress. Until they reached that potential, social stratification would be considered as justified.⁶³

These ideas of race, progress, and the influence of the environment became the basis for Aboriginal policies in the British colonial world. By and large, the notion that all humans were on a linear path towards a Western notion of civilization laid the foundation for policies of assimilation that were premised on the *potential* for equality without having to actually grant it. The prevailing belief was that, while Aboriginal people could be ‘civilized’ to a certain extent, they could only be absorbed into the lower echelons of white society. Such beliefs were reflected in the implementation of Aboriginal policy, and indeed, resolved one of its inherent contradictions: Aboriginal people were schooled not to *succeed* in white society, but rather, barely *subsist* in it.⁶⁴

The culmination of the variety of the above ideas produced specific circumstances at mid-century. Increasing knowledge about the world and human difference coincided with the

⁶¹ Louis Agassiz, *On the Natural Provinces of the Animal World, and Their Relations to the Different Types of Man* (A. and C. Black, 1854), 350–351.

⁶² Lewis H. Morgan, *Ancient Society* (New York: Henry Holt and Company, 1877).

⁶³ See for instance, David Roger Oldroyd, *Darwinian Impacts: An Introduction to the Darwinian Revolution* (Atlantic Highlands, NJ: Humanities Press, 1980); Stephen K. Sanderson, *Social Evolutionism: A Critical History* (Cambridge: Blackwell Pub, 1990).

⁶⁴ See for instance Armitage, *Comparing the Policy of Aboriginal Assimilation*; Dippie, *The Vanishing American*; Francis Paul Prucha, *The Great Father*.

height of settler colonialism and attempts to maintain political power and control over territory through the stratification of populations. Science, religion, and the emerging social sciences brought the so-called problems of race to the forefront. The correlation between the kinds of shifts in Aboriginal policy away from the goals of segregation, alliance, or the management of violence to the goals of assimilation and integration is not a matter of coincidence. Nor was the increasing awareness of the presence of mixed-ancestry Natives. The bureaucratization of state's relationship with Aboriginal peoples, which entailed race-based policies of assimilation, the advent of post-Enlightenment racial science, and the need to designate mixed-ancestry Natives into existing legal categories is why the 'problem' of mixed race became an issue only after 1850.

Race and Hybridity

If this was the ideological premise of Aboriginal policy, then racial mixing greatly complicated these already unstable 'facts'. The common sense of race shaped public and official ideas of race: everyone belonged to a racial category, and those categories were socially and culturally significant. But there was no common sense of *mixed* race. In fact, mixed race defied the very idea of a common sense of race. Where 'racial others' were easily identifiable by sight, mixed-ancestry Natives were not. Even more so, mixed-ancestry Natives were not clearly categorizable, even when they were 'identifiable. It *seemed* that who was mixed race should be obvious, but it was not. Instead, there seemed no logical way to fit them into the racial dichotomy created by colonialism.

The problem lay with science itself. The debates about the viability of racial mixing that developed alongside broader theories of race were reflected in the unresolved debates policy makers had over the role of mixed-ancestry Natives in the national framework. Consequently,

racial mixing was a major preoccupation for both academics and policy makers. In part, the repeated but failed attempts of policy makers to find a consistent, workable definition for mixed-ancestry Natives reflected the dilemma created by this challenge to common sense. Policy makers expressed anxiety about racial mixing, though not necessarily just because interracial unions were seen as a ‘sexual affront.’⁶⁵ Instead, the anxiety was a reaction to the very existence of an epistemological ambiguity and uncertainty that challenged the world order informed by racial science.

Aside from its philosophical implications, racial ambiguity was believed to have serious political implications, as many believed was evidenced by Latin America’s tumultuous history. Europeans equated the political upheavals of the independence era spanning from the end of the eighteenth to the middle of the nineteenth century with the presence of a large mixed-race population.⁶⁶ Essentially, racial mixing was interpreted as the cause for political and economic instability – what Europeans and Americans looked upon as Latin America’s ‘backwardness. Spain’s losses in the Americas during the nineteenth century and the decades of instability they caused afterward served as a lesson for others with political and economic power to protect from rising creole powers.⁶⁷ For Britain, its colonies, and the US, then, thwarting racial mixing was a kind of preventative measure or exercise in self preservation.

⁶⁵ I hold that there is a difference in attitudes towards miscegenation and attitudes towards mixed-race individuals, and the ideological considerations for both are not necessarily the same. For discussions on miscegenation in the colonial context, see especially Stoler, “Sexual Affronts and Racial Frontiers” and Ellinghaus, *Taking Assimilation to Heart*.

⁶⁶ Indeed, this is evidenced by the comments of racial scientists throughout the nineteenth century, especially Gobineau. Arthur comte de Gobineau, *The Inequality of Human Races [1853-55]* (G.P. Putnam’s Sons, 1915).

⁶⁷ The racial status of Spanish creoles in the Americas was contested: some racial theorists, such as Gobineau, held that they ‘deteriorated’ under the influence of both the climate and the Indigenous population, even though there was a marked social separation between the two groups within Latin American countries. For a discussion see Richard Graham, ed. *The Idea of Race in Latin America, 1870-1940* (Austin: University of Texas Press, 1990) and Nancy Stepan, *The Hour of Eugenics: Race, Gender, and Nation in Latin America* (Ithaca: Cornell University Press, 1991).

But hybridity was not uniformly or unanimously held to be negative. Like the broader field of the study of race, scientists fiercely debated the implications, meaning, and viability of racial mixing. Most of these debates were at least initially framed by two overarching considerations: fertility and species.⁶⁸ In strictly biological terms, hybridity meant the successful production of fertile offspring by two separate species. Indeed, the fertility of offspring was used as a test to determine if the parents were separate species: infertile offspring meant they were separate species. If this were true, then biology would provide a justification for upholding social mores against miscegenation. Unsurprisingly, not everyone agreed. American scientist, Louis Agassiz, for instance, noted in an 1850 *Christian Examiner* article that the issue of separate species and fertile offspring need not be mutually exclusive. Evidence of productive miscegenation between the races did not need to indicate that races were the same species. In an infamously crude statement, he explained, “It is well known that the horse and ass produce mules, though they constitute distinct species.”⁶⁹ Instead, he argued that the Bible told the story of the white race only; the rest were not descended from Adam and Eve. Of course, the ‘science’ was more a guise for the expression of personal prejudices. Nonetheless, it illustrated the important nature of the debate and its relevance to racial mixing: a difference in species could mean a difference in origins and thus, a justification for anti-miscegenation.

By both theory and evidence, the debate should have been nullified. Given the overwhelming proof in the sheer number of mixed-race individuals, it seemed illogical to argue that racial mixing was not biologically sustainable. Even well past the middle of the nineteenth century, when the state of scientific knowledge should have forced dissenters to concede, some scientists continued the debate. Darwin’s work should have laid the matter to rest with his

⁶⁸ Robert Young, *Colonial Desire*, 6.

⁶⁹ Louis Agassiz, *The Diversity of Origin of the Human Races* (from the *Christian Examiner* for July, 1850). (Boston: s.n.], 1850), 113.

conclusions on species and fertility. His theory in *On the Origin of Species* had in part posited that species as a way of dividing the natural world was neither stable nor absolute, but changed according to natural selection. In fact, he questioned the fundamental ways in which scientists defined ‘species,’ arguing that the lack of agreement on its definition made it difficult to utilize the concept with broad application.⁷⁰ Additionally, and in contrast to many other scientists studying race and human difference, he argued that fertility was not the deciding criterion of species. He argued that “neither sterility nor fertility affords any clear distinction between species and varieties.”⁷¹ There was too much variation of the fertility in ‘crossing’ among species, and too many other factors involved to conclude that the fertility of offspring defined species. He thus intended to put the whole matter to rest by questioning the relevance of the species debate altogether.⁷²

Either a product of personal prejudice, or perhaps a result of the initial suppression of Darwin’s work in Britain, the debate raged on.⁷³ For instance, in the preface to French physician Paul Broca’s 1864 survey of human hybridity, C. Carter Blake, secretary to the Anthropological Society of London, claimed that, “We have been so often told, that all races of men have been demonstrably proved to be fertile *inter se*, that many have conceived that the laws regulating this presumed fertility are ascertained and fixed, beyond the reach of disproof, or even of doubt. The Author and Editor of the following pages are, however, of a different opinion; and are content to

⁷⁰ While most scientists at the time and historians since have interpreted Darwin as a ‘species nominalist,’ that is, the belief that species is not a real category, Darwin’s discussion of species in *Origins* was more ambiguous than that. Indeed, he argued that species as a real category lacked a clear or uniform definition, but he still continued to use it in his work. See Darwin, *On the Origin of the Species*, especially Chapter 8 for the relevance of species to hybridity. For a discussion of the interpretation of Darwin’s use of species as a category, see David N. Stamos, *Darwin and the Nature of Species* (Albany: State University of New York Press, 2007). Stamos argues that the widely accepted interpretation of Darwin as a species nominalist is the result of a “superficial reading” of Darwin: Stamos, 4.

⁷¹ Darwin, *On the Origin of the Species*.

⁷² *Ibid.*, 13.

⁷³ Eve-Marie Engels and Thomas F. Glick, eds. *The Reception of Charles Darwin in Europe* (London; New York: Continuum, 2008).

wait for the accumulation of future facts.”⁷⁴ Blake was presenting a popular hypothesis among those who opposed racial mixing: that ‘hybrids’ were actually producing children with ‘new stock’ – that is, so-called pure race individuals. According to this hypothesis, the viability of hybridity was never truly tested. Consequently, whether or not mixed race groups were producing fertile offspring over the long run remained, for many skeptics, an unanswered question.

The debate about fertility was merely the surface of an underlying social question about the indicators of racial mixing. In some instances, hybridity was viewed as having positive consequences (for instance, that hybridity among white races resulted in an ‘enduring’ race, like those in Britain), while in others it produced degeneration (such as the peoples of Latin America). A spectrum of hypotheses emerged throughout the century which held every possibility, from the denial that people could mix at all, to the belief that all races could reproduce unimpeded. Historian Robert J.C. Young identifies five major arguments about racial mixing.⁷⁵ First was the ‘polygenist species argument,’ which purported that racial mixing was biologically unsustainable. Any offspring would be infertile – if not immediately, then after a generation or two. A second and close argument was the ‘decomposition thesis,’ which held that fertile offspring could indeed be produced, but they would eventually revert to one of the parent types. Third was the amalgamation thesis, which argued that racial mixing could occur without obstacle or limit, and produced a new race. It was contrasted with a ‘negative’ version, which held that this limitless amalgamation would produce “raceless chaos.” The final theory was based in the notion of ‘racial distance’: proximate races could reproduce, while distant ones (white and black) could not. For the most part, the theories were illogical, and produced

⁷⁴ C. Carter Blake, “Preface,” in Paul Broca and Charles Carter Blake, *On the Phenomena of Hybridity in the Genus Homo* (Anthropological Society, 1864).

⁷⁵ Young, *Colonial Desire*, 18.

confusion and disagreement. They had little evidence for support, and could not be supported in terms of biology. Consequently, the debate about racial mixing quickly became a debate about the social and cultural merit of miscegenation.

The continuing uncertainty over the viability of racial mixing would prove significant to Aboriginal policy towards mixed-ancestry Natives. The same impermanence that scientists saw in racial mixing was reflected in government policies. ‘Mixed race’ was not a permanent category and human hybridity was biologically unsustainable. Government administrators saw mixed-ancestry Natives as ‘temporary’ and believed that eventually and permanently, they belonged (or would belong) to one of two categories the colonial model proposed: Natives or Newcomers. However, as the following chapters illustrate, this was not always the role of those individuals, nor was it necessarily how they saw themselves.

Each of these theories would prove influential among members of the public – including the very officials who created and applied Aboriginal policy. As specific examples in Canada, the US, and Australia would demonstrate throughout the latter part of the nineteenth century and the early part of the twentieth century, the debates about racial mixing produced by scientists were reproduced in Aboriginal policy. Policy-makers could not come to a consensus about the merits and viability of racial mixing. They could not create a stable definition of ‘mixed race.’ And they could never entirely decide what role mixed-ancestry Natives would occupy in Aboriginal policy, legal definitions, or members of their respective nations.

Race as a Local Function

If the ambivalence of the scientific community was not enough to contend with, the reality of racial demographics and cultural diversity complicated matters even more. Generally,

the racial hierarchy, stratified roughly from light to dark, put Aboriginal peoples somewhere in the middle.⁷⁶ As Winthrop Jordan explains for the US in *White over Black*,

The Negro's complexion seemed more important than the Indian's not only because the Indian was less dark but because with the Indian attention was focused primarily on the question of origin. Indeed both in Europe and America white men belittled the importance of the Indian's tawny complexion or used it merely as a foil for proving certain points about the Negro's blackness... There was little dissent to the commonplace assertion that the Indians' tawny color resulted wholly or in part from their custom of daubing themselves with bear grease, oils, or the like from a well-stocked cabinet of natural cosmetics... White men seemed to want to sweep the problem of the Indian's color under the rug. The question of the color of man was pre-eminently the question of the color of the Negro.⁷⁷

'Black,' then, served as a foil to 'Native,' as was especially the case in the US. The presence or absence of other 'racial others' changed this hierarchy and the relative position of Aboriginal people in national, regional, and local ways. In Canada and Australia, the vilified 'racial others' were immigrant Asian populations.⁷⁸ In any case, 'race' must be understood as a local function as well as a transnational one. It changed from place to place, as well as over time. The status of particular groups was unstable and changing, and immigration and slavery had implications for public attitudes and official policies about Aboriginal peoples.

The different ways in which race was identified in these three countries speaks to a comparative racial discourse. The point here is not to reinforce the notion of skin colour as race, or even to give validity to such rankings; rather, to point out that each of these countries has its

⁷⁶ The order of the racial hierarchy was highly contested in regards to Aboriginals and Asians. While most scientists agreed on the order in a three-tiered system (white, Asian, then Black), fewer agreed on whether or not Indigenous peoples, especially in the Americas, were a separate fourth race or one constituted from what they considered the original three. In addition, there was significant disagreement over Aboriginal Australians, who were seen by some scientists as African descendants, and by others, as Caucasians whose physical difference could be explained by environmental factors. This is discussed by Mr. Neville at the 1937 Aboriginal Welfare Conference, where he cites the Adelaide Anthropological Board. Neville, 1937 Aboriginal Welfare Conference, 14. It also forms the basis of Anderson's discussion of the debates over racial assimilation and segregation in the Pacific region. Anderson, "Ambiguities of Race."

⁷⁷ Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968).

⁷⁸ For a discussion of the intersection between Indigenous and Asian populations in the creation of Aboriginal policy in BC, see Mawani, *Colonial Proximities*.

own racial context. The idea of race was constituted in local, regional, and national contexts. What ‘race’ meant among the Creek in south-east US is different than what it meant among the Pueblo in Arizona. And what it meant in northern Western Australia is different than what it meant in a broader Australian national context. How racial categories and boundaries are defined is in part shaped by local, regional, and national demographics: they are relational. Immigration and slavery played alongside colonialism, not only in the construction and importance of race, but in its specific national character and meaning. In consequence, the well-known racial hierarchy was complicated and altered by the specific demographics of each country. Hence, the placement of Aboriginal peoples on that scale varied.

The development of the idea of race, then, was a complex matrix of both knowable and unknowable factors. It was not just a foreign concept applied to distant colonies: it was also constituted of local interpretations and national concerns. As one study on Aboriginal protection in the British Empire notes, ideas were not necessarily “imposed on the colonial periphery from a more humanitarian-inclined metropolitan centre. Rather, and we suggest much like other imperial projects, it was elaborated through the intersection of personal, discursive and textual trajectories that connected Britain to each of its colonial spaces and those colonial spaces to each other.”⁷⁹ Indeed, the specific brands of ethnology that developed in colonies around the world, including what would become Canada, the US, and Australia, significantly altered the theories that came out of Europe, and especially Britain. The mixing that became increasingly disconcerting to administrators would only serve to further complicate it.

⁷⁹ Lester and Dussart, “Trajectories of Protection,” 217.

Theory: “Insights and Oversights”⁸⁰

If racial science can provide an ideological framework for understanding Aboriginal policy and how mixed-ancestry Natives fit into it, then postcolonialism can provide a conceptual basis for explaining it. Indeed, the complexity and contradictory nature of how race operated in the context of colonialism and, specifically, Aboriginal policy in Canada, the US, and Australia requires some theorizing. There is perhaps no other single theoretical conceptual framework that has done more for our understanding of colonialism and its functioning than Edward Said’s *Orientalism*.⁸¹ As one reviewer describes, “it is a book that is deeply critical of liberal humanism for masking a history of Western colonial dominion in the mythic figures of human progress, truth, and freedom.”⁸² Among the several definitions and explanations Said ascribes to orientalism is that it is “a style of thought based upon an ontological and epistemological distinction made between ‘the Orient’ and (most of the time) ‘the Occident.’”⁸³ Accordingly, there exists an epistemological framework essential to colonialism that polarizes east and west.

Said was specifically referring to the ‘Near East’ when he conceptualized orientalism, but, by accident or design, it became one of the hallmarks of postcolonialism and understanding colonial actors. It was through the essential polarity that he set up as ‘occident/orient’ where he revealed what he saw as the true nature of colonialism: a power struggle won through an intellectual process. Colonialism was not just political domination: it was also ideological domination. He argued that the history of colonialism had been interpreted through a European cultural lens. The result was the production of Eurocentric ideologies about the world that became the dominant narrative. They justified colonialism, they justified European domination,

⁸⁰ Varisco, *Reading Orientalism*, 237.

⁸¹ Said, *Orientalism*.

⁸² Steven Seidman, “Empire and Knowledge: More Troubles, New Opportunities for Sociology (Review of *Orientalism* by Edward Said),” *Contemporary Sociology* 25, no. 3 (May 1996): 313.

⁸³ Said, *Orientalism*, 2.

and they justified the subjugation of Indigenous peoples. Colonialism, then, produced binaries based in inequalities: those with power (political, social, economic, knowledge, legal), and those without. This divide was also racialized: those in power were ‘white’ and those not were ‘coloured’ – Black, Native, or Asian. Orientalism has thus been interpreted in broader terms as a Western mode of thought which defines colonialism as the West’s domination over the rest of the world. This is a system of representations forced upon the ‘East’ by a set of references that deny it any history, culture or identity of its own, and that inscribe it within Western ideological constructs.

There are evident parallels between Said’s interpretation and the ideas of racial science, unsurprising given that modern notions of race arose from colonialism. Like orientalism, the idea of race in post-Enlightenment science is also an epistemological creation designed to maintain binaries and inequality. Race provides a system of assessment for difference by evoking visible signs, from skin colour to religious practice, or hair type to material culture. Orientalism exposed the unspoken assumptions and premises upon which colonialism and the texts it left behind were based. Once this binary was exposed, it seemed evident everywhere. Yet, as Said has so aptly informed us, it is an *imagined* binary with real implications. This is, in fact, part of what Said argues: the imagined becomes reality over time. What we imagine, when we imagine it long enough, eventually manifests as a lived reality. The idea of the racial other, imagined as it might be, has resulted in some very real effects: laws that exclude, social mores that ostracize, cultural standards that subjugate. This very distinction – between ‘the orient’ and the occident,’ or here, ‘native’ and ‘newcomer’ – was the very basis of Aboriginal policy. It drew a legal distinction between Natives and all other citizens, creating a racial binary that reflected and reproduced social, legal, and political categorizations.

Hybridity

The mutability of colonial categories and the processes of hybridity that actually occur in colonialism challenge the idea of orientalism. Said's critics argue that the binaries represented in orientalism are essentialized and do not reflect the complex realities of colonialism. Instead, colonialism is a process that instigates mixing, fluidity, and interchangeability. Moreover, they say, orientalism and its emphasis on western ideology undermine those who are colonized by reinforcing the epistemological dominance of the colonizer.

Hybridity theory responds to these criticisms and provides a remedy to what are perceived as the shortcomings of Said's *Orientalism*. Broadly, hybridity refers to mixing. In postcolonial theory, it is generally understood to refer to the mixed discourses that arise out of diasporas – that is, the displacements (cultural, political, geographic, or otherwise) that occurred during the colonial process.⁸⁴ Hybridity theory views culture, action, identity, language, and event as having blurred boundaries, and recognizes the influences that categories have on each other, and indeed how categories always defy their own confines. It exposes the world as muddled, indefinable, and uncompartimentalized. It is ambiguous, it is unstable, it is elusive, and it dissolves difference. It posits the world, quite simply, as mixed: an opposition to Enlightenment-based Western epistemologies that privilege categories and hierarchy – and Said's orientalism.

Harvard literary theorist Homi Bhabha offers a useful, though infamously complicated, concept of hybridity. Perhaps the leading hybridity theorist, Bhabha posits hybridity is a process of identity-formation and cultural production in a colonial setting. It is a direct product of the relationship between the colonizer and the colonized. Hybridity in this context considers the

⁸⁴ "Hybridity" and "Diaspora" in David Macey, *Penguin Dictionary Of Critical Theory*, New edition (Penguin UK, 2005), 98. For a concise history of hybridity as theory, see, Deborah A. Kapchan and Pauline Turner Strong, "Theorizing the Hybrid," *The Journal of American Folklore* 112, no. 445 (Summer 1999): 239–253.

porous relationship between the colonizer and the colonized. It occurs in what he calls the “liminal space” which is generated by interaction between different cultures; it denies “primordial polarities” of identity – like those of orientalism – but maintains that there is difference.⁸⁵ Hybridity in this context considers the porous relationship between the colonizer and the colonized – that these are not the clear-cut binaries we have typically understood them as. So, hybridity for Bhabha is a process of mixing, a product of mixing, and the space in which mixing happens.

There are three central points to Bhabha’s complex idea of hybridity that are relevant to mixed-ancestry Natives and Aboriginal policy: identity, ambivalence, and periphery. Bhabha’s concept of identity is based in the notion of lived difference. Identity is a three-tiered process, he argues, that occurs in relation to something else. First, identity is ‘called into being’ (it is external); second, identity is dual in nature (it’s relational); and third, identity is production (it is a process). Bhabha says that the process of identification does not affirm a pre-existing identity; it is always the production of something new in relation to that which ‘calls it into being,’ in Bhabha’s terminology.⁸⁶ Identity is formed out of the duality of rejection of externally imposed identities with the desire for our internally generated ones. We are not only what others make us, nor are we only what we see ourselves to be. We are a product of both. This is not to suggest that identities – in this case, of mixed-ancestry Natives – did not exist prior to the laws and policies that identify and target them; rather, that new identities are created and imposed.

Another key concept to Bhabha’s hybridity is ambivalence. Ambivalence refers to the oscillation between acceptance and rejection, assimilation and segregation, or likeness and difference. It is not a single, uniform concept, but represents overlapping ideas. First, it

⁸⁵ Bhabha, “Introduction: Locations of Culture,” *The Location of Culture*, 5–6.

⁸⁶ Homi K Bhabha, “Interrogating Identity: Franz Fanon and the Postcolonial Prerogative,” *The Location of Culture* (London: Routledge, 1994), 63.

represents ambivalence toward the process of hybridity. In the context of racial mixing, opposition to miscegenation was actually an expression of the desire for it or attraction to it.⁸⁷ Second, ambivalence is expressed through what Bhabha calls ‘mimicry’ – that is, a failed attempt by colonizers to re-interpret the identity of the colonized. It is a *failed* attempt because colonialism is ambivalent and colonizers are ambivalent about the colonized. This ambivalence is represented in the oscillation between acceptance and rejection, assimilation and segregation, or likeness and difference. It is prevalent throughout both processes, as the impulses to attraction and rejection are constantly competing. What results is, as Bhabha states, a “recognizable other as a subject of a difference that is almost the same, but not quite.”⁸⁸

A third central aspect of Bhabha’s writings on hybridity is the relationship between what he refers to as the center and periphery – in Said’s terms, a representation of the Occident (centre) and the Orient (periphery), or the colonizer and the colonized. The ‘centre’ holds power and authority over the ‘periphery. But whereas Said views this relationship as an oppositional or binarized one, Bhabha envisions a continual and regenerative power struggle that is produced and reproduced dialogically. The periphery (or Orient) is not only defined by the center (or Occident): the center is also defined by the periphery. In fact, the periphery plays a role in the definition of the centre because the centre is always defining itself in relation to the periphery. Herein lies a key concept for understanding the role of racial mixing in Aboriginal policy. Racial mixing, as the periphery, ultimately defines racialization, or the centre. In this case, the reified identities produced by colonialism (colonizer/colonized; Newcomer/Native) are defined in relation to the hybridized identities. Referring back to the notion that mixed race defies the common sense of race, I argue that it also defies the idea of racial categories. It provides an

⁸⁷ This concept has been applied to specific historical situations as a mode of analysis for a number of historians, but most notably, Young in *Colonial Desire* and Stoler in *Carnal Knowledge and Imperial Power*.

⁸⁸ Bhabha, “Of Mimicry and Man: The Ambivalence of Colonial Discourse,” *The Location of Culture*, 126.

oppositional force to the idea of racial categories, driving policy makers to produce and reproduce those very categories. Ultimately, this is evidenced in the process of attempting to place individuals of mixed ancestry into one of those two existing (and imagined) racial categories: Native and Newcomer (or Oriental and Occidental).

What this means in empirical terms is a bit less complicated than what the above paragraphs might suggest. The practical application of Bhabha's concept of hybridity to the ways in which mixed-ancestry Natives were targeted in Canada, the US, and Australia comes down to three key ideas. First is the external and relational aspects of identity – the ways in which policy and law that targeted mixed-ancestry Natives influenced the development of cultural identity. These are broadly accepted aspects of identity formation, but Bhabha's specific interpretation posits it within the process of hybridity in colonialism, making it particularly poignant.⁸⁹ The second is the use of 'ambivalence' to understanding the actions and decisions of officials about the role that mixed-ancestry Natives would occupy. It was they, not mixed-ancestry Natives themselves, who were ambivalent about the identity of mixed-ancestry Natives, and were so because of the poor fit of racial categories to actual people and cultures. Third is understanding mixed race as the periphery of official Aboriginal identity. From Bhabha's perspective, the periphery defines the center: the very presence of mixed-ancestry Natives shaped ideas of aboriginality in law and policy. Indeed, in creating definitions of 'Native' and other Aboriginal policies, policy makers were often reacting to the presence of mixed-ancestry Natives.

Mestizo Logics

It is at this juncture that Jean-Loupe Amselle's work can provide a bridge between two seemingly opposing theories. Amselle considers how the role of the state has crystallized

⁸⁹ James E. Côté and Charles G. Levine, *Identity, Formation, Agency, and Culture: A Social Psychological Synthesis* (Mahwah, N.J. : L. Erlbaum Associates, 2002), 49.

identity.⁹⁰ His thesis is an anthropological critique meant to counteract essentialism: he argues that cultural identity is a continuum, and that pre-contact Indigenous cultural identities were subject to the same cultural interactions and influences that produced change after colonialism. Fundamentally, he argues that pre-colonial cultural identity was “characterized by fluidity;”⁹¹ but colonialism, taking its cue from anthropologists, crystallized cultural identity by placing tribes into rigid categories. He maintains that it is through the process of recording categories (a census is a good example) that cultural identity becomes frozen over long periods of time.⁹² This is what Amselle identifies as ‘ethnographic reason,’ or the application of anthropology. Ethnicity or culture thus becomes an anthropological and colonial invention that turns identity from a fluid process into a static category. ‘Mestizo logics’ is posited here as the alternative to ethnographic reason, where hybridity is understood as the normal cultural condition.

As a critical anthropology, Amselle’s work provides a bridge between the view of state officials in constructing reified categories and the notion that identity is a fluid, continual process. If hybridity is the norm, then colonialism is the attempt to order fluid, changing, and mixing into categories with clear boundaries. He juxtaposes what Said describes as imagined and imposed identities against the reality of ‘originary syncretism’ – or in Bhabha’s terms, hybridity. Fundamentally, these two concepts function simultaneously in a colonial context: one imagined, and one lived. One can more readily see, then, how these concepts might further our

⁹⁰ There has been some significant works that examine the role of the state in colonialism, including Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, N.J: Princeton University Press, 1996). While there are some overlaps in the ideas presented here, there is a significant difference in emphasis between Cohn and Amselle’s theses. Both use the codification of culture through official documentation, like the census, to demonstrate their points that identities become in part state-produced. However, Cohn considers the mechanisms of state power in terms of its attempt to assume control over a non-settler colonized society, while Amselle focuses more on the role of these mechanisms in assigning and pronouncing cultural difference. It is the assignment and pronouncement of difference that is important in terms of how this dissertation uses official documents.

⁹¹ Owen White, “History and Anthropology Mestizo Logics: Anthropology of Identity in Africa and Elsewhere. By Jean-Loup Amselle (trans from the French by Claudia Royal). Stanford: Stanford University Press, 1998,” *The Journal of African History* 41, no. 03 (2000): 517.

⁹² Amselle, *Mestizo Logics*, 151.

understanding of other histories of colonialism, such as the process of identity-formation and identity-imposition in Aboriginal policy. This is particularly important in how external forces (law and policy in the present study) created or influenced cultural identity. Undoubtedly, such is also true in Canada, the US, and Australia. Applied to what, for policy-makers, was the ‘problem of mixed race’ in the late nineteenth and early twentieth centuries, Amselle’s work helps unravel some of the complexities of creating identity through law, particularly for mixed-ancestry Natives by demonstrating how hybridity and orientalism operate simultaneously.

Conclusion

The common theme that emerges from the theory, practice, and science of hybridity is that of ambivalence. Bringing these three perspectives together illuminates the relationship between the contradictions of policy and the role of mixed-ancestry Natives. This understanding can be seen along three polarities. First, there is an obvious tension between the competing and oscillating goals of assimilation and segregation in Indian policy. The tension between assimilation and segregation is a reflection of the second tension: between hybridization and the maintenance of racial categories. The idea of race is undermined by the idea of mixed race, yet mixed race is what propels race. Third, these binaries can be examined by using Said’s idea of orientalism and Bhabha’s idea of hybridity. In postcolonial literature, these two ideas have been posited as binaries themselves. Repeatedly, scholars have pitted the two against each other, Bhabha as the ‘remedy’ to Said. However, I posit that both are actually true and can and should be used together to analyze the functioning of colonialism. Orientalism represents the *desires* of colonialism, while hybridity represents its *reality*. Furthermore, orientalism and hybridity also represent the conflicts in racial science.

These tensions played out in Aboriginal policy in important ways. It was here that the definitions based in racial classificatory systems were codified into law, that the struggles among race scientists to determine the nature of racial crossing was expressed, and that the inherent problems in the theories were exposed and undermined. But the shift from scientific theory to practice challenged race's structural integrity. Race did not work, yet policy makers made every attempt to make it work. This produced struggle, ambivalence, and ambiguity – all of which fully emerged in the targeting of mixed-ancestry Natives. It is there, in the details of these policies that targeted mixed-ancestry Natives, where the next three chapters turn.

Chapter 4 - Mixed-Ancestry Natives in Canada: ‘Ordinary Citizens’

Upon the conclusion of Treaty Seven with the Blackfoot Confederacy in 1877, Lieutenant Governor Alexander Morris collected a history of his extensive dealings with western Indigenous peoples. As treaty commissioner between 1873 and 1876, Morris had negotiated several of the numbered treaties.¹ More than most government administrators, Morris recognized distinctions among the Halfbreed populations of the Northwest, a territory which later became the prairie provinces. Indeed, he recognized ‘three classes’ of mixed-ancestry Natives: those who lived as whites, those who lived as Indians, and those who practiced a combination of those traditions. However, despite his acknowledgement of the diversity among mixed-ancestry Natives, he still demonstrated the ambiguity inherent in racializing them. In his 1880 report, he noted that

The Half-breeds in the territories are of three classes – 1st, those who, as at St. Laurent, near Prince Albert, the Qu’Appelle Lakes and Edmonton, have their farms and homes; 2nd, those who are entirely identified with the Indians, living with them, and speaking their language; 3rd, those who do not farm, but live after the habits of the Indians, by the pursuit of the buffalo and the chase.

As to the first class, the question is an easy one. They will, of course, be recognized as possessors of the soil, and confirmed by the Government in their holdings, and will continue to make their living by farming and trading.

The second class have been recognized as Indians, and have passed into the bands among whom they reside.

The position of the third class is more difficult. The loss of the means of livelihood by the destruction of the buffalo, presses upon them, as upon our Indian tribes; and with regard to them I reported in 1876, and I have seen no reason to change my views.²

¹ Morris also worked with revising treaties 1 and 2. Jean Friesen, “Alexander Morris,” *Dictionary of Canadian Biography Online*, John English, general editor, accessed 22 February 2013, www.biographi.ca.

² Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto* (Saskatoon: Fifth House, 1991 [1880]), 294-5.

Morris was right in distinguishing these broad differences, but his views lacked an appreciation of how Indigenous peoples classified themselves, and the unimportance of race to those classifications. They also demonstrated the problem with his categories: how were the individuals of his third class any different from those of the second? In an earlier report, he called them “wandering Half-breeds of the plains, who are chiefly of French descent and live the life of the Indians.”³ But by attempting to combine lifestyle factors with biological ones, he would only add to the ambivalence of race. In collapsing categories like ‘Métis’ and ‘Halfbreed,’ Morris reproduced two of the most enduring myths about mixed-ancestry Natives in Canada: that mixed-ancestry Natives could easily be distinguished from Indians, and that mixed-ancestry Natives could be collapsed under one heading, ‘Half-breed.’

Indeed, in Canada, there has been notable confusion about terminology.⁴ This has had consequences for the writing and understanding of history. ‘Métis’ has become a term of general application, much as ‘Half-breed’ was in the nineteenth century, and has inadvertently misled us in terms of the diversity of mixed-ancestry Natives. It has also confused divisions and disguised connections among Indians, Métis, and Halfbreeds, compounded by continually changing legal definitions that have historically conflated ‘Métis’ and ‘mixed race,’ and confused self-ascription with imposed legal definition. Government administrators, those who documented and codified their lives and identities, rarely acknowledged the problems that accompanied those divisions, and did so even less towards the twentieth century. But the belief in race as a biological

³ Ibid.

⁴ In Canada, ‘Metis’ is an Indigenous group who acknowledge their dual European-Native ancestry. They are recognized by law as one of Canada’s three Aboriginal groups, as outlined in the 1982 Constitution and in a Supreme Court decision, *R. v. Powley*, [2003] 2 S.C.R. 207, 2003 SCC 43.

construct, and especially the belief that racial mixing is only the sum of its parts, has allowed this fallacy to persist in both law and popular imagination.⁵

The history of the relationship between the Canadian state and mixed-ancestry Natives is more complex than what the literature suggests. Dialogue about mixed-ancestry Natives was implicit in laws and policies that dealt with Indians, with Métis, and with those Natives defined neither as Indian nor Métis.⁶ The distinctions applied to Indigenous groups by policy officials happened with little apparent clarity or design. Instead, the treatment and status of mixed-ancestry Natives within Aboriginal policy was replete with ambiguity and contradiction. While not a concern prior to the mid-nineteenth century, racial mixing increasingly shaped law and policy by Confederation and more clearly by the 1870s. Implicitly, mixed-ancestry Natives became the targets of discrimination, albeit ambiguously at times. This was first evidenced by attempts to separate mixed-ancestry Natives in law from those classified as Indians, and then by denying them official recognition of their Aboriginality. These attempts were not always successful, in part because of Aboriginal kinship patterns, and in part because of the ambivalent nature of race ideology. But by the first decades of the twentieth century, Canada had succeeded in imposing a two-category system of legal identity: Indians or ‘ordinary citizens’ – a term that would be used frequently throughout the late nineteenth and early twentieth century to describe the alternative to ‘being Indian’ for those individuals of mixed ancestry. By force or choice, mixed-ancestry Natives, including the Métis, would have to fit into one or the other.

⁵ Robert Alexander Innes, “Multicultural Bands on the Northern Plains and the Notion of ‘Tribal’ Histories,” in *Finding a Way to the Heart: Feminist Writings on Aboriginal and Women’s History in Canada*, ed. Robin Brownlie and Valerie J. Korinek (Winnipeg: University of Manitoba Press, 2012).

⁶ Some Métis scholars reject the description of Métis as ‘mixed race,’ as it denies the cultural ethnogenesis of the group. See especially Chris Andersen, “From Nation to Population: The Racialisation of ‘Métis’ in the Canadian Census,” *Nations and Nationalism* 14, no. 2 (2008): 347–368.

In practice, there were contradictions at every turn. Protocols were disregarded, and terms of eligibility for policies were often ignored. This was not merely a matter of lower level agents failing to comply with policy; it was a matter of internal and systemic contradictions in the make-up of those policies. Yet, despite the lack of design, intent, or consensus, these contradictory policies shared a surprisingly unified end: the elimination of racial ambiguity. This process entailed three steps: excluding mixed-ancestry Natives from the definition of ‘Indian,’ conflating ‘Métis’ and mixed ancestry Natives, and attempting to create a definition of mixed-ancestry Natives as ‘Halfbreeds. This was evidenced in three main policy areas: the Indian Act, scrip, and treaties.

Treaties

If a treaty policy for mixed-ancestry Natives could be articulated, it was one of exclusion. Officials repeatedly denied requests by First Nations leaders to include their ‘Halfbreed cousins’ in treaty. As treaty commissioners like Alexander Morris and other government officials often reiterated during the years of treaty negotiations when faced with these requests, “the treaties were not for whites.”⁷ However, Halfbreeds were not considered white in a nineteenth-century social setting either. So, how were they categorized?

A closer look at Canada’s treaty policy in regard to mixed-ancestry Natives, and even into Morris’ words, reveals an ambiguous answer to that question. Morris was wrong on two accounts. Not only were Halfbreeds not considered ‘white,’ they were also not wholly barred from treaties. Indeed, it was Canada’s stated policy to exclude Halfbreeds from treaties, but its practice did not align to the policy. Instead, Canada tended to exclude mixed-ancestry Natives as groups but not as individuals, and often acted in contradiction of even these vague guidelines. Instead of a clear-cut policy, the treatment of mixed-ancestry Natives in treaty policy emerged as

⁷ Morris, *The Treaties of Canada with the Indians*, 50.

a pattern that developed over years of practice rather than as a pre-defined directive. Commissioners created *ad hoc* responses to requests by Aboriginal leaders to include mixed-ancestry Natives. While ‘Halfbreeds’ were allowed into treaty on an individual basis under certain circumstances, they were more frequently denied inclusion as a group distinguishable from the First Nations. Between 1850 and 1921, Canada would use the treaty process as an attempt to eliminate racial ambiguity and draw clearer lines between Indians and mixed-ancestry Natives.

It did not start that way, though. In the negotiation of earlier treaties, the notion of ‘racial purity’ was not a consideration for treaty commissioners or other government representatives who negotiated with Indigenous leaders, leaving the intricacies of membership at their discretion. The so-called peace and friendship treaties reflected the nature of Native-Newcomer relations. Absent of the desire to control the Aboriginal population that would become evident beyond the 1850s, it was Aboriginal groups themselves who defined the parameters of their participation through the representation by their leaders. Indeed, these treaties make no mention of any limits placed on chiefs to determine who was considered a member. But, by 1850, as the relationship shifted to one of coercion, and as administrators began to take notice of blood quantum in other respects, they began to take note in the treaty process as well.⁸

Evidence that race and racial purity would become a factor in the treaty policy first emerged in the 1850 Robinson Treaties. During treaty talks, requests by Anishnaabek leaders for the inclusion of their allied Halfbreed neighbours were denied. Such requests not only suggested existing kinship ties among Aboriginal peoples, but political alliances as well. Recent intrusions on their lands via mining had resulted in what would become a typical pattern of threat to Native

⁸ For a thorough examination of the treaty tradition in Canada, including an apt periodization of that policy, see J. R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009).

title and resource extraction from their lands.⁹ Having a stronger force in combining with the Métis undoubtedly strengthened their position. In any event, Aboriginal groups had their own established patterns of alliance and treaty traditions, most of which would be ignored over the next six or seven decades as land surrenders became one of the dominant aspects of Native policy and a key factor in Canadian economic development.

The Robinson Treaties marked a new tradition in a number of ways. While they were part of an earlier practice that predates and is considered separate from the numbered treaties, they provided a template that would form the basis for the Prairie treaties starting in the 1870s.¹⁰ As would become part of the prairie formula, the Robinson treaties ceded large tracts of land for non-Native use, in this particular case, mining. They also resembled later treaties in another important way. One of the distinguishing features of the treaty policy in regard to mixed-ancestry Natives was the frequent attempts of chiefs to include Halfbreeds in the process. It was also a distinguishing feature of the treaty policy that commissioners frequently denied the inclusion of Halfbreeds as groups.

The events of the 1850 Robinson Treaties also set a precedent for how mixed-ancestry Natives would be treated in this regard. The commissioner's report noted that "The relations of the Indians and Halfbreeds have long been cordial; and in the negotiations as to these initial treaties, as in the subsequent ones, the claims of the Halfbreeds, to recognition, was urged by the Indians."¹¹ Moreover, the chiefs requested that Halfbreeds receive 100 acres of land each as their settlement. These requests were not granted, but many individuals of mixed ancestry joined in with some of the bands in those treaties. Nonetheless, the government's view about 'valid' Native participants continued to be shaped by a belief in race and the immutable categories that

⁹ Ibid., 113–114.

¹⁰ Ibid.

¹¹ Morris, *The Treaties of Canada with the Indians*, 16.

defined it. Métis had to choose between being classed as ‘Indians’ if they wanted to participate in treaty, or be ‘ordinary citizens’ and not be included.

This practice of exclusion would develop into a pattern across the prairies in the numbered treaties, and it would come despite the fairly consistent and repeated requests from Indians for the inclusion of Halfbreeds. Such was the case with Treaty Two in 1871 (Manitoba Post). As in the Robinson Treaties, mixed-ancestry Natives wanting to participate in the treaty process were given a choice. Morris explained to them that if they took treaty payments and stayed in treaty, they could not subsequently participate in scrip. Granted, budget-conscious administrators sought to prevent individuals receiving compensation twice, but there was more at work here.¹² The choice between scrip and treaty would amount to a choice between identifying as Métis or identifying as Indian – a choice that reflected the polarized view of the Newcomers’ idea of race. This incident reflected not only the government’s view, but also Aboriginal ones. The Halfbreeds had clearly identified as Indians. Ultimately, in Treaty Two, individuals were given the choice of identity – as either Indians who took treaty, or as Halfbreeds who received scrip, the latter of which would then be regarded as ordinary citizens. The treaty process thus served as a means of dividing a hybrid population into two distinct and immutable categories.

The North-West Angle Treaty, or Treaty Three, is even more revealing in this regard. In the 1873 the chiefs also wanted some Métis families included. One chief, for instance, asked that Halfbreeds “should be counted with us, and have their share of what you have promised. We wish you to accept our demands. It is the half-breeds that are actually living amongst us – those that are married to our women.”¹³ Morris gave a vague answer, but suggested that they had to

¹² Assistant Commissioner Hayter Reed was especially conscious of individuals taking scrip while drawing treaty annuities after discovering cases in the Northwest. Glenbow Archives [hereinafter GA], Edgar Dewdney Fonds, M 320, Reed to Dewdney, 6 September 1885.

¹³ Morris, *The Treaties of Canada with the Indians*, 50.

choose between being Indian and being a ‘white’ citizen. He continued, “they must be either white or Indian. If Indians, they get treaty money; if the Half-breeds call themselves whites, they get land.”¹⁴ His comments clearly represented the dual nature that framed the perceptions of culture differences held by many administrators, and suggested the ways in which government perspectives about identity differed from Indigenous ones. But they also represented the kind of ambivalence government administrators could demonstrate about the racially mixed. As noted at the start of this chapter, Morris clearly acknowledged the diversity of populations that existed among those classified more broadly as Halfbreeds. Yet, here, he insisted on imposing a racial binary that contradicted that diversity. Ultimately, Morris, like other government officials that would follow him, could not conceive of a space for identity that was more fluid.

The matter did not end there. In 1875, the Métis of Rainy Lake and Rainy River became parties to that treaty. While historical interpretation has dismissed their inclusion as an anomaly,¹⁵ the situation actually demonstrates what might more accurately be described as the government’s ambivalent behaviour towards mixed-ancestry Natives. In this case, the Métis there were promised their own reserve and to be included in treaty just as Indian bands were.¹⁶ They signed an agreement with J.S. Dennis in 1875, the surveyor general, that was to constitute an adhesion to Treaty 3. Apparently, it was never ratified. They were eventually absorbed into a near-by reserve, suggesting that their pre-existing ties constituted grounds for their inclusion. However, the government’s approach suggests that their belief that the Métis were distinct from the Indians remained. According to Deputy Minister of the Interior, E.A. Meredith, those Métis

¹⁴ Ibid., 69.

¹⁵ John Leonard Taylor, “An Historical Introduction to Metis Claims in Canada,” *The Canadian Journal of Native Studies* 3, no. 1 (1983): 151–181.

¹⁶ Wayne E. Daugherty, *Treaty Research Report - Treaty Three (1873)*, report (Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986), accessed 9 February 2013, <http://www.aadnc-aandc.gc.ca/eng/1100100028671/1100100028673>.

families were allowed entry into treaty only because of the Métis men who were married to Indian women. While they allowed the inclusion of the Métis in this case, they did so with warning and condition. The Métis, they said, must choose between being ‘Indian’ and being ‘white,’ and by entering treaty, they would be giving up their rights as Halfbreeds.¹⁷ They would also, according to Meredith, be giving up their rights of citizenship: they would lose their right to vote and to purchase property, and they would be taking on the status of legal minors. It is apparent, then, that the inclusion of mixed-ancestry Natives in treaties was not a recognition of their specific ethnicity, particularly as distinguishable from the First nations with which governments negotiated. Instead, it was a choice in identifying with only one of two available categories: Indian or ‘ordinary citizens.’¹⁸

Aboriginal leaders also made appeals on behalf of the Métis in Treaty Four at Qu’Appelle in 1874. When Chiefs asked that Halfbreeds should be allowed to hunt, commissioners responded only that “the population in the North-West would be treated fairly and justly.”¹⁹ Native leaders were rarely satisfied with such terse responses, and subtly pressed for clarification, as was the case in Treaty Four. The conversation continued:

THE GAMBLER: “...Now when you have come here, you see sitting out there a mixture of half-breeds, Crees, Saulteaux and Stonies, all are one, and you were slow in taking the hand of a half-breed.”

MORRIS: “...We have here Crees, Saulteaux, Assiniboines, and other Indians, they are all one, and we have another people, the Half-breeds, they are of your blood and my blood. The Queen cares for them ... and you may rest easy, you may leave the Half-breeds in the hands of the Queen who will deal generously and justly with them.”²⁰

¹⁷ Ibid., 57–58.

¹⁸ Wendy Moss argues that the inclusion of the Métis in Treaty Three was not anomalous, but instead, not “unusual for its recognition of the Métis as a distinct group of native people with special rights and claims.” What is less clear, though, is how officials at the time viewed those ‘special rights and claims’ in comparison to those of Indians. Wendy L. Moss, *Metis Adhesion to Treaty No. 3* (Ottawa: Native Council of Canada, 1979).

¹⁹ Morris, *The Treaties of Canada with the Indians*, 83.

²⁰ Ibid., 88–89.

Morris' response not only demonstrated his exclusion of Halfbreeds from eligibility for treaty, but it also reflected well-entrenched beliefs in racial categorization. While the Crees, Saulteaux, and Assiniboines were lumped together as Indians, Halfbreeds were separated out by their mixed 'blood. Gradually, legal meaning was being assigned to perceived racial difference, even if it conflicted with kinship ties or self-ascription.

The government's distinction between Indians and Halfbreeds persisted as treaty commissioners moved west across the newly acquired Rupert's Land.²¹ During Treaty Six negotiations, Cree leader Mistawasis also made a bid on behalf of Halfbreeds. But his requests met with the same fate as those of Indian leaders in other treaty negotiations. On August 23rd, 1876, when he requested that they be allowed to live on reserves, Morris answered: "I explained the distinction between the Half-breed people and the Indian Half-breeds who lived amongst the Indians as Indians, and said the Commissioners would consider the case of each of these last on its merits."²² If anymore was said on the matter, Morris did not report it. Nor was there anything prior to this point to indicate that there was a distinction made based solely on mode of life, as opposed to blood quantum or descent. There was also no indication that anyone other than Morris adhered to this subdivision of Halfbreeds. If we are to take that report as the final word, Mistawasis then signed the treaty without pursuing the issue further.

This may have been the end of Mistawasis' vocalization on the matter, but it was not the last time such a request would be made. A few weeks later, on September 16th, Cree chief Red Pheasant brought up a similar issue. Morris reported that Red Pheasant "wished the claims of the

²¹ Rupert's Land comprised most of the territory between the province of Ontario and the colony of BC. It was transferred from the Hudson's Bay Company to Canada in 1870.

²² Morris, *The Treaties of Canada with the Indians*, 187.

Half-breeds who had settled there before the Government came to be respected.”²³ The Governor responded that,

The Queen has been kind to the Half-breeds of Red River and has given them much land; we did not come as messengers to the Half-breeds, but to the Indians. I have heard some Half-breeds want to take lands at Red River and join the Indians here, but they cannot take with both hands. The Half-breeds of the North-West cannot come into the Treaty. The small class of Half-breeds who live as Indians and with the Indians, can be regarded as Indians by the Commissioners, who will judge each case on its own merits as it comes up, and will report their action to the Queen’s Councillors for their approval.²⁴

While Morris created a space, undefined as it was, for conditions under which a Halfbreed might be considered Indian, it was an exception to an otherwise assumed rule: Halfbreeds were not Indians.

Morris deserves special attention here, as he provides an example of a detailed view of mixed-ancestry Natives and because he was an important treaty official. Specific articulations of racial ideas were uncommon; instead, they were usually unspoken and assumed. The record of his views on the racial landscape in Canada’s Northwest provides some insight into the more local ‘Prairie’ employment of race. He acknowledged a cultural complexity that contradicted the binary policy tried to superimpose on a complex Aboriginal population. In his comments, Morris clearly distinguished Halfbreeds from Crees, Saulteaux, and Assiniboines. But later in his report, he recognized that they were still separate from whites. They were, he said,

the wandering Half-breeds of the plains, who are chiefly of French descent and live the life of the Indians. There are a few who are identified with the Indians, but there is a large class of Metis who live by the hunt of the buffalo, and have no settled homes. I think that a census of the numbers of these should be procured, and while I would not be disposed to recommend their being brought under the treaties, I would suggest that land should be assigned to them, and that on their settling down, if after an examination into their circumstances, it should be found necessary and expedient, some assistance should be given them to enable them to enter upon agricultural operations.

²³ Ibid., 193.

²⁴ Ibid., 222.

If the measures suggested by me are adopted, viz., effective regulations with regard to the buffalo, the Indians taught to cultivate the soil, and the erratic Half-breeds encouraged to settle down, I believe that the solution of all social questions of any present importance in the North-West Territories will have been arrived at.²⁵

Given the important role Morris played in the development of treaty policy, his views are especially significant. But his acknowledgement of this diversity was contravened by the actual treaty negotiations. Morris repeatedly and contradictorily insisted that ‘Halfbreeds were not whites’ and that they had a choice between treaty and scrip – a choice which really meant a choice in self-ascription.

Morris also clearly envisioned mixed-ancestry Natives as cultural ambassadors – a view that enabled this continuing racial ambiguity that he and other officials sought to eliminate.²⁶ The well-known commentary by then Governor General Lord Dufferin included in Morris’ treaty report captures this idea of the ‘cultural broker’ best:

There is no doubt that a great deal of the good feeling thus subsisting between the red men and ourselves is due to the influence and interposition of that invaluable class of men the Half-breed settlers and pioneers of Manitoba, who, combining as they do the hardihood, the endurance and love of enterprise generated by the strain of Indian blood within their veins, with the civilization, the instruction, and the intellectual power derived from their fathers, have preached the Gospel of peace and good will, and mutual respect, with equally beneficent results to the Indian chieftain in his lodge and to the British settler in the shanty. They have been the ambassadors between the east and the west; the interpreters of civilization and its exigencies to the dwellers on the prairie as well as the exponents to the white men of the consideration justly due to the susceptibilities, the sensitive self-respect, the prejudices, the innate craving for justice, of the Indian race. In fact they have done for the colony what otherwise would have been left unaccomplished, and have introduced between the white population and the red man a traditional feeling of amity and friendship which but for them it might have been impossible to establish.²⁷

²⁵ Ibid., 195.

²⁶ As David McNab suggests, stereotypes of the Métis and other mixed-ancestry Natives as ‘cultural brokers’ are myths based in unquestioned nineteenth-century notions of the Métis as “hearty, helpful, co-operative and efficient.” McNab argues instead that their roles were more complex. David T. McNab, “Hearty Co-operation and Efficient Aid: The Metis and Treaty 3,” *Canadian Journal of Native Studies* 3, no. 1 (1983): 131–149.

²⁷ Morris, *The Treaties of Canada with the Indians*, 294.

Morris agreed with Dufferin. On the one hand, he acknowledged the important role that some mixed-ancestry Natives played in prairie peace-keeping; but he also perpetuated the widespread and popular myth that, as ‘racially mixed,’ mixed-ancestry Natives were stuck between ‘two worlds’ with no distinct cultural identity. He continued to force the same choice between two racial polarities: Indian and white. A third category was conceivable only as a temporary or transitional one.

Indian Commissioner Wemyss M. Simpson also demonstrated some awareness of this complexity, although he forced the same kind of duality on the population in the end. While he recognized that mixed-ancestry Natives could and did live among Indians, he gave them the same ultimatum that would become the hallmark of Canadian Indian policy: a choice between ‘Indian’ or ‘Halfbreed,’ the latter of which would come to mean ordinary citizen. As he noted in his report:

During the payment of the several bands, it was found that in some, and most notably in the Indian settlement and Broken Head River Band – a number of those residing among the Indians, and calling themselves Indians, are in reality half-breeds, and entitled to share in the land grant under the provisions of the Manitoba Act. I was most particular, therefore, in causing it to be explained, generally and to individuals, that any person now elected to be classed with Indians and receiving the Indian pay and gratuity would, I believed, thereby forfeit his or her right to another grant as a half-breed, and in all cases where it was known that a man was a half-breed, the matter, as it affected himself and his children, was explained to him, and the choice given him to characterize himself. A very few only decided upon taking their grant as Half-breeds. The explanation of this apparent sacrifice is found in the fact that the mass of these persons have lived all their lives on the Indian Reserves (so called), and would rather receive such benefits as may accrue to them under the Indian Treaty than wait the realization of any value in their half-breed grant.²⁸

Simpson’s attitude reflected government concerns about the costs associated with extinguishing Aboriginal title, and especially a concern that Halfbreeds were in a position to receive benefits in

²⁸ Wemyss M. Simpson, Indian Commissioner, 3 November 1871. *Canada Sessional Papers* [hereinafter, *CSP*] 1871, 30.

two ways. However, they also reflected the underlying assumptions about identity and racial mixing. This division of Halfbreeds and Indians, and especially the exclusion of Halfbreeds from the treaty process, contradicted Aboriginal understandings and formulations of their own identities as well as their relationships with Canada. Such perspectives were rarely acknowledged or recorded, though.

The discrepancy between these understandings of identity was evident elsewhere, too. For instance, the mixed-ancestry Natives in Manitoba who were absent when treaties were negotiated protested their exclusion from the process, seeing themselves as a band equal to any other. Indian Commissioner I.W. Powell explained, “They wish to be acknowledged as special Bands, distinct from the Indian Bands which surround them, taking, at the same time, their share of the privilege granted the Indians, and claiming under the two heads of White and Indian descendants.”²⁹ A similar situation was reported in the Treaty Four area, near Qu’Appelle, in 1876 by acting treaty commissioner M.G. Dickieson. A number of Halfbreed groups approached Dickieson for annuity payment. When he questioned their band membership, they expressed a desire to create their own bands “distinct from the Indians.” Dickieson, perhaps not surprisingly, refused, absurdly quoting the Indian Act to them. The groups then claimed membership in existing bands, which Dickieson also rejected. He declared that “these persons have always been accounted Half-breeds, have never adopted the Indian habits or ways of life.”³⁰ To be certain, how individuals ‘had always’ been classified would hardly matter seven years later when scrip commissioners and Indian agents withdrew thousands of Indians from treaty and re-classified them as Halfbreeds.

²⁹ Indian Commissioner I.W. Powell to Deputy Superintendent General, Indian Affairs. *CSP* 1875 pt 1, 30 October 1875, 33.

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In the meantime, he used these previous classifications to justify maintaining dubiously constructed racial categories. Despite his final decision, he expressed ambiguity and ambivalence about the meaning and value of these more simplified and reified racial categories. Contrary to his decision that the Treaty Four Halfbreeds could not be counted as Indians, he acknowledged the diversity among people of mixed ancestry. He paraphrased Morris's 'three classes of Half-breeds,' but added a fourth class:

The question as to who is or who is not an Indian is a difficult one to decide, many whose forefathers were Whites, follow the customs and habits of the Indians and have always been recognized as such... A second class have little to distinguish them from the former, but have not altogether followed the ways of the Indians. A third class again have followed the ways of the Whites more than those of the Indians, while others have followed the habits of Whites and have never been recognized, or accounted themselves as anything but Half-breeds.³¹

As Dickieson himself admitted, there was little distinction among the so-called classes, and noted the inadequacies of the Indian Act to deal with problems of ambiguous classification, including the recognition of those 'full bloods' who had never belonged to any band. But this did not stop him from imposing his own ideas of identity onto a group of people who had no problems identifying themselves. By the terms of the Indian Act, those so called 'full bloods' were not Indians. He aptly pointed out that he had been forced to refuse entry to the siblings and even parents of those who were regarded as belonging to recognized bands.³² Expressing concern over the difficult position the law had placed him in, he felt that "wrong had been done last year in admitting those, or I was not doing right now in refusing to admit their relations into the Bands."³³ Any discrepancy between the rules and the practice, then, was reduced to an administrative error. Dickieson's observations should not be taken as altruistic or even

³¹ Introduction, Special Appendix C, M.G. Dickieson report to Minister of Interior, 7 October 1876. *CSP* 1876, xxxiv.

³² Devine, *The People Who Own Themselves*.

³³ Introduction, Special Appendix C, M.G. Dickieson report to Minister of Interior, 7 October 1876. *CSP* 1876, xxxiv.

sympathetic; instead, his main concern was “not to degrade the White to the position of the savage.”³⁴ Halfbreeds who were ‘too white’ should then not be considered either Indian or Halfbreed.

But this was not necessarily what Halfbreeds themselves thought. Indeed, many saw themselves as Aboriginal, equal to Indians and deserving of the same benefits and treatment accorded by the government. This was not just a political statement about rights, though: it was a cultural one, too. Such was the case with the above-mentioned group Dickieson encountered. But this was not an anomalous case. Similar demands were echoed when Indigenous groups across the prairies were transitioning to a new lifestyle as the buffalo declined and settlers moved into the Northwest, disrupting animal migration patterns and hunting practices. In one of many petitions that would be made throughout the Northwest, Cypress Hills Halfbreeds requested a reserve, assistance in transitioning to agriculture, and education. They pointed not only to the decline in buffalo stocks, but also to a Northwest Territory ordinance which limited their hunting activities. Accordingly, the already-strained economy was further impeded.³⁵ They saw themselves on the same footing as other Indians in the territory, many of whom lived similar lifestyles, and demanded the same treatment. Of course, not all mixed-ancestry Natives identified in this way, but it is significant that those who did were largely ignored by an ambivalent government.

Indian Act

Just as treaties became more exclusive, so did legislation. Efforts to distinguish Halfbreeds and Indians became part of the laws that applied to Aboriginal people as the attempt

³⁴ Introduction, Special Appendix C, M.G. Dickieson report to Minister of Interior, 7 October 1876. *CSP* 1876, xxxiv.

³⁵ “Petition from Half-breeds Living in the Vicinity of Cypress Hills,” 30 September 1878. *CSP* 1886, Vol. XIV (No. 45), Department of the Interior, 10-11

to eliminate racial ambiguity continued. As with treaties, there was a discernible shift in attitudes evidenced by the chronology of legislative changes from 1850 on. Ideas about racial categories and racial mixing became codified as legal definitions for cultural groups. The process began slowly in the pre-Confederation period, but was clarified in the few years following Confederation and the consolidation of the Indian Act. Between 1876 and 1884 –the passing of the first Indian Act and a major revision of the act – two distinct legal categories were created: ‘Indian’ and ‘Halfbreed. These legal categories would not always coincide with Aboriginal kinship systems and rules of membership, and applying them would prove to be problematic. These definitions ultimately served to highlight the contrast between how government officials and Aboriginal people constructed identities. They also exposed the contradictions of the idea of race and the ways in which Aboriginal policy reflected those contradictions. They nonetheless remained as major determinants of eligibility in Aboriginal policy well into the twentieth century.

Five acts preceded the first consolidated Indian Act in 1876 and formed the basis for these definitions. The first definitions were laid out in 1850. Two almost identical acts, one each for Upper and Lower Canada, established a precedent for defining Aboriginal people in law. While not explicitly a blood quantum criterion, the definition assumed a biological definition through ‘blood. They defined four conditions of status: first, those who were “of Indian blood;” second, were married to or descended from an Indian; third, resided among Indians and whose parent was a member of that tribe, or entitled to be; and finally, adopted children.³⁶ This initial definition, then, was based more in Aboriginal ideas of identity than it was in racial ones. Subsequent acts in 1851, 1857, 1868, and 1869 used this definition as its basis, but some amendments shifted the focus of identity construction. First, the 1851 amendment excluded non-

³⁶ *Statutes of Canada [SC]* 1850, chap. 42, 13-14 Vic, sec. 5.

Indian men married to Indian women, undermining Aboriginal kinship rules and privileging European gender and descent rules.³⁷

Second, and more significantly, the 1869 Act included two further provisions that would have a specific effect on mixed ancestry Natives. First, it introduced for the first time in law a blood quantum rule. Section four read: “In the division among the members of any tribe, band, or body of Indians, of any annuity money, interest money or rents, no person *of less than one-fourth Indian blood*, born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certificate to that effect is given by Chief or Chiefs of the band.”³⁸ Thus, inheritance laws became restricted by blood quantum, which would effectively exclude certain mixed ancestry Native populations. It also added a patrilineal descent rule to status: children of men and women from different tribes would “belong to their father’s tribe only.”³⁹ These early acts laid the foundation for creating a definition with the purpose of eliminating specific individuals. While these acts, their provisions, and their implications are well known in historiography, they are generally not considered for the effects they had on those populations who gradually and eventually would be excluded from being considered ‘Indian.’⁴⁰ Academics instead have tended to focus on the populations that it *included*. Instead of just representing the beginnings of an era of control over ‘Indians,’ it also represented the beginning of an era when racial classification would direct Native policy for the next century, and the selection process in that system would see the exclusion of many mixed-ancestry Natives from the official discourse.

The restrictions placed on identity that would become one of the hallmarks of the Indian Act were introduced in 1876 – the first real Indian Act. Various clauses in section two laid out

³⁷ SC 1851, chap. 59, 14-15 Vic.

³⁸ SC, *Gradual Enfranchisement Act*, 1869. 31st Victoria, Chapter 42. Author’s emphasis.

³⁹ SC, *Gradual Enfranchisement Act*, 1869, sec. 6.

⁴⁰ A notable exception is Bonita Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview,” *Hypatia* 18, no. 2 (Spring 2003): 3.

explicit definitions: “The term “Indian means - *First*. Any male person of Indian blood reputed to belong to a particular band; *Second*. Any child of such person; *Third*. Any woman who is or was lawfully married to such person.”⁴¹ So began the process of exclusion: the basic premise to this definition that was seen in 1850 was the same, but there was one important difference. In 1850, one would be considered Indian if either parent was an Indian. But in 1876, one was only considered Indian if one’s *father* was considered an Indian. Maternal descent was no longer considered a valid source of Indian identity.

In a manner consistent with the ambivalent practices that came to characterize Indian policy, these laws were frequently not enforced. The treaty policy combined with legislative initiatives under the Indian Act to produce an umbrella policy of exclusion of mixed ancestry Natives; yet practice continued to defy these objectives. Nowhere was that more evident than on reserves, where mixed-ancestry Natives continued to be identified by Indian agents as reserve residents and status Indians. Numerous examples verify this point. The superintendent visiting the Thessalon River Reserve in Ontario reported in 1874 that “owing to intermarriage with the whites, about twenty Halfbreeds claim to belong to the Band.”⁴² Indian Commissioner I.W. Powell noted in 1875 that more than half of the 1943 members of the St. Peter’s Band were ‘Halfbreeds.’⁴³ Bands were not the racially pure communities that officials were attempting to create, but little if any effort was made to remove those who did not conform to this imagined idea of society.

In British Columbia, the concern was a bit different. Indian Commissioner James Lenihan viewed Halfbreeds on reserves there as the ‘unfortunate by-product’ of the actions of unscrupulous white men. Mixed-ancestry Natives had become a social burden, in his view,

⁴¹ *Indian Act*, 1876.

⁴² CSP 1874 part 2, JC Phipps, Superintendent.

⁴³ CSP 1875 pt. 1, Indian Commissioner I.W. Powell, 7 November 1875.

suggesting that “they do a large amount of mischief” and that “some legal provision should be made which would secure the offspring of whitemen cohabitating with Indian women from being thrown upon society as paupers, in case of the death of such male parents, or in case of the abandonment of them by such male parents after a certain lapse of time.”⁴⁴ The focus of attention was on the immorality of racial mixing, and, as would also be the case in Australia, the disruption to what were already very tentative Victorian family models and social categories in an unstable frontier environment. As scholar Renisa Mawani suggests, this interracial mixing was a threat to “respectable white masculinity” and the future of the ‘white race.’⁴⁵

The emphasis on paternal descent did not coincide with cultural identity among many First Nations, nor did it coincide with racial identification in standard Canadian census practice. Indigenous groups each had their own standards for cultural identification, many of them matrilineal. However, it was generally more complex than that. For instance, even though the dominant descent rule among the North West Coast Tlingit is along matrilineal lines, that does not preclude an important relationship with patrilineal lines: “Children are born into their mother’s moiety, clan, and house rather than their father’s. Although they are not members of their father’s clan, they maintain a special relationship with his clan. Through his or her birth into a clan and house, an infant has all the rights to land and property held by the clan. The child does not inherit privileges, rights, or property as under American law, but is entitled to these rights through his or her membership in a clan.”⁴⁶ So, unlike descent rules in European-based societies, they did not determine a child’s entire formal status, identity, or even rights to property. However, according to scholar Robert A. Innes, descent rules do not entirely capture the

⁴⁴ CSP 1875, pt 1, Indian Commissioner James Lenihan, 7 November 1875.

⁴⁵ Mawani, *Colonial Proximities*, 89.

⁴⁶ Rosita Worl, “Tlingit,” in *Encyclopedia of North American Indians* (Boston: Houghton Mifflin Company, 1996).

complexity of identity formation.⁴⁷ His examination of kinship patterns in the Cowessess Band in Saskatchewan demonstrates that identity is not necessarily determined by ‘ethnicity’ or ‘race’. In fact, band identity can be ‘multicultural’ and does not require cultural uniformity. In the case of Cowessess, he continues, it was the similar practices of kinship rules that allowed for separate groups to co-exist as one band. Thus, the ways in which western-based racial ascription clashed with Indigenous-based systems of identity formation were complicated and layered.

A major revision to the Indian Act in 1951 emphasized this difference, creating what has become known as the ‘double mother’ rule. Ironically, this new Act was intended to reflect what was viewed as the ‘toppling of racism,’ a shift prompted by the post-WWII era, the rise of anthropology and the popularization of ‘cultural relativism.’⁴⁸ Instead of reflecting these principles, the new Act sought to eliminate the number of Indians eligible for status by using marriage as a form of assimilation. It did not have the intended effects where status was concerned, though, most likely because the Act only attempted to remove the coercive methods of assimilation, not the goal of assimilation itself. This new act further amended an already-existing discrimination in how status could be transferred to mixed ancestry children. While previous acts had barred women who married non-Indian men and their children from being counted as ‘Indian’ according to the Act, the 1951 changes added a narrower blood quantum. Under the new provisions, certain individuals whose mother and paternal grandmother were not Indian could not be considered Indian themselves.⁴⁹ Gender was increasingly invoked in racial ascription often in contradiction of cultural practices.

⁴⁷ Innes, “Multicultural Bands on the Northern Plains and the Notion of ‘Tribal’ Histories.”

⁴⁸ Introduced by Franz Boas in the early nineteenth century, cultural relativism was popularized by his student, Alfred Kroeber, over a number of early twentieth-century publications.

⁴⁹ Bonita Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview,” *Hypatia* 18, no. 2 (Spring 2003): 13..

Scrip

While the Indian Act was a significant contributor to mixed-race discourse in Canada, scrip was the major component. Scrip, a policy intended to extinguish the native title of mixed-ancestry Natives, demonstrated the ambivalence and ambiguity evidenced during other Aboriginal policies. One of the most significant hallmarks of the scrip policy was how it collapsed all mixed-ancestry Natives, Métis and Halfbreeds, into one category. If ever there was any acknowledgement of the social and cultural variety of mixed-ancestry Natives, this delineation would quickly be lost among those in Ottawa by the 1880s. Part of the reason for this lay in the purpose of this policy. Scrip began as an initiative to satisfy the claims of the Red River Métis – a specific and distinct cultural and political group – but it quickly expanded as the sole means by which Canada would extinguish the title of all Natives of mixed ancestry in the prairie west. It became part of an impetus to pacify what was perceived as a potentially violent Aboriginal west in order to make way for white settlement. By extending the terms of eligibility to those who were biologically ‘Halfbreeds,’ and conflating all mixed-ancestry Natives under the term ‘Halfbreed,’ Canada effectively extinguished any outstanding claims to title that might have remained from a treaty policy that had officially excluded Halfbreeds. In this way, the title of all Aboriginal peoples, Indian and Halfbreed, would be extinguished.

The scrip policy would do more, though. It also blurred the cultural boundaries of groups who, otherwise unrelated, became conflated under one heading. The major step in this process occurred in an attempt to define the term in regard to eligibility for scrip. Scrip was first used in Manitoba, where it provided a means to fulfill the terms of the 1870 *Manitoba Act* – the outcome of negotiations between the Manitoba Métis and Ottawa following the 1870 Red River Resistance. The well-known causes of the Resistance can largely be attributed to grievances concerning land title and political representation, beginning with the transfer to Rupert’s Land to

Canada without consultation with the Métis. Concerned that their occupation of the land would not be recognized, they petitioned Ottawa. Without a forthcoming or expedient response from the federal government, the Métis declared a provisional government, finally producing an incentive for the federal government to enter into negotiations. In the spring of 1870, Alfred Scott, Bishop Taché, and Judge Black set off for Ottawa as the Western representatives, returning with the terms of what became the *Manitoba Act*. Among these terms included the foundations for extinguishing Métis Aboriginal title in Manitoba and established who was eligible to participate in the land grant. However, it did not identify a process for distributing the land. Instead, a series of orders-in-council issued over the next few years determined how 1.4 million acres of land would be distributed.⁵⁰

Initially, administrators made no attempt to define ‘Halfbreed’ in framing eligibility for scrip.⁵¹ Identity, and accordingly, eligibility, was determined by an affidavit made by the applicant, and signed by two witnesses who attested to the applicant’s identity as a Halfbreed and resident in the Northwest. Outside of a geographical association, there was little need to define the term. Eligibility for scrip applied to a very specific group of people in a small, defined territory: Manitoba in 1870 comprised a small portion of its current size. Its population of 12,000 consisted largely of Métis, who constituted the vast majority at almost 10,000.⁵² From that perspective, there was little need to expand on that for the policy. As had been the case during

⁵⁰ Camie Augustus, “Metis Scrip” in Cheryl Avery and Darlene Fichter, eds., *Ka-Ki-Pe-Isi-Nakatamakawiyahk = Our Legacy: Essays* (Saskatoon, SK: University Archives, University of Saskatchewan, 2008).

⁵¹ The legislative instruments here use the term “Halfbreed”, the only restriction being that of residence. The instructions indicated that allotments were to be granted to “every half-breed resident in the Province of Manitoba at the time of the transfer to Canada, (the fifteenth day of July, A.D. 1870) and every child of every such half-breed resident shall be entitled to participate in the 1,400,000 acres.” Privy Council O.C.P.C. [hereinafter *PC*] 874, 25 April 1871. Even an order-in-council passed in 1875 that was intended to “define the individuals entitled to participate in the grant” still did not provide a definition for “Halfbreed” beyond the residency requirement. PC 406, 26 April 1875.

⁵² LAC RG 15, D-II-1 Vol. 228 File 1155. Notably, there is no clear definition of ‘half-breed’ in the record for the purposes of this census.

treaty negotiations, decisions were largely left to the individuals themselves. However, commissioners increasingly expressed concerns about the validity of this process, and insisted on having greater authority in accepting or rejecting an applicant's self-ascription. This was especially so when scrip was extended in 1885 into the Northwest Territory as the means of dealing with Native petitions there. Administrators ran into issues surrounding eligibility that they had not encountered in Manitoba. In the Northwest, it was less clear who was eligible for scrip.

Contrary to standard practice in Canadian Aboriginal policy, creating an official definition of 'Halfbreed' was an inclusive rather than exclusive policy. Unlike the Indian Act, which since 1850 increasingly restricted the definition of Indian, the scrip policy did not. In fact, the initial instructions did not give any definition, specific or otherwise, to identify Halfbreeds. The only criteria for eligibility in the official instructions were occupancy and residency requirements: that is, only those resident in the territories prior to the date of the transfer of Rupert's Land to Canada were eligible to make a claim.⁵³ As the initial instructions detailed,

The claimant is required to furnish to the commission evidence on the following points – such evidence to be in each case by affidavit of the claimant to be made before the commission and substantiated by the affidavits, sworn as aforesaid, of two reliable and disinterested witnesses personally cognizant of the facts – (a) that he is a half breed head of a family resident in the North West Territories previous to the 15th day of July 1870, or (b) that he is a child of a half breed head of a family resident in the North West Territories previous to the 15th day of July 1870, and born before that date.⁵⁴

There was noticeable ambiguity in these definitions: they did not actually define anyone. Instead, there was an inherent assumption about precisely who that meant. Here was a classic case of the unspoken assumptions of race. But it was also a case of mixed race defying race: when administrators attempted to write definitions that articulated the difference between Halfbreeds

⁵³ Camilla Augustus, "The Scrip Solution: The North West Metis Scrip Policy, 1885-1887" (MA Thesis, University of Calgary, 2005), 64.

⁵⁴ A.M. Burgess to W.P.R. Street, 30 March 1885. LAC MG 29, Series E16, Volume 1, File3.

and Indians, or even Halfbreeds and whites, they were unable to. This not only reflected problems in the scrip policy, it also reflected problems in racial science as a whole.

It was not until later that year that it became clearer what administrators were ‘assuming’ when they used the term. A new order-in-council added that ‘Halfbreed’ could now also include children born of “pure Indian and White parents”.⁵⁵ So, not only did the definition of ‘Halfbreed’ include those born of ‘Halfbreed’ parents, but also those of mixed ancestry born to parents of different ‘racial’ categories. These unstable definitions continued to evolve in reference to the context of policy, but also in reference to the context of ‘pure’ racial categories. To administrators, then, mixed-ancestry Natives, as a product of mixed unions, were the same as those people of dual origins who had over many generations, developed distinct cultures and communities.

The issues regarding gender and descent that arose in the earlier stages of the Indian Act also emerged in the scrip policy. How a married woman’s status was affected by her husband’s posed complications for administrators. In a similar vein, there was an inconsistency in how Aboriginal descent for the purposes of legal claims were viewed. The Indian Act had designated patrilineal descent as the guiding rule for Indians. But for Halfbreeds, descent could be traced along either paternal or maternal lines. As scrip commissioner J.A.J. McKenna pointed out years later, “It has been the custom to recognize Halfbreed rights coming from the mother as well as the father; and consequently claims have been allowed of children who were the offspring of mothers of part Indian blood married to husbands of exclusively white blood.”⁵⁶ This explanation demonstrated the ambivalence of descent rules, where scrip allowed entitlement through maternal or paternal lines, but the Indian Act traced descent only through fathers. But this

⁵⁵ PC 1202, 2 July 1885.

⁵⁶ Commissioner McKenna to Minister Sifton, 6 June 1901. LAC RG 15 D-II-1 vol 825 File 616753.

inconsistency also supports the contention that definitions of ‘Indian’ were increasingly *exclusive* while definitions of ‘Halfbreed’ were increasingly *inclusive*. It was easier to prove belonging to the latter which, not coincidentally, was the group who would lose official recognition as Aboriginal by taking scrip.

The impetus to include was not solely one of administrators. Native opinions throughout the Northwest played an important role in shaping the direction of government policy. A series of petitions from communities throughout the region was effective in convincing the government to expand its scrip policy from Manitoba into the rest of the west. These began as early as 1880, when Halfbreed residents of Edmonton sent a petition to Ottawa demanding the same treatment as those resident in Manitoba – that is, the proper recognition of their title through the issuance of scrip.⁵⁷ Others followed from Cypress Hills, Qu’Appelle, Prince Albert, St. Laurent, and other communities in Manitoba and the North West not included in the original Manitoba scrip area. Although the exact requests varied from community to community, they were consistent in the recognition of their title, and usually in requesting assistance for the economic transition with which so many Native residents were contending. This is not to suggest, however, that the Métis or other mixed-ancestry Natives were complicit with policies of assimilation or exclusion; but rather, that policies and their application were not at the sole discretion of government officials.

And it was in part because of these petitions that Canada initiated the North West scrip commissions in 1885. However, this was not the response of an altruistic government responsive to Native demands. Scrip was a process of assimilation, not the recognition of a cultural or racial category to whom Aboriginal title was accorded. Instead, it served a multitude of government directives. It worked in concert with their policy of Indian ‘exclusion’ and their purported goals

⁵⁷ “Petition from Residents of Edmonton,” 19 May 1880. CSP 1886, Vol. XIV (No. 45), Department of the Interior, 18-20.

of assimilation. Transitioning Natives from the category of ‘Indian’ to that of ‘Halfbreed’ offered what was seen as a comparatively smooth conversion to ‘ordinary citizens. It functioned as a process of voluntary enfranchisement, as had been attempted earlier, but worked more efficiently and effectively. It would also conveniently end the government’s fiduciary duty and financial obligation to thousands of Natives. Scrip formally extinguished Aboriginal title, as detailed in the Dominion Lands Act, whether or not applicants realized it. Finally, the scrip policy served as a process of identifying mixed-ancestry Natives and eliminating their status, official or otherwise, as Aboriginal. They became unambiguous ‘ordinary citizens.’

The latter of these aims became evident in the years between 1885 and 1887 when numerous treaty withdrawals were made so that Indians could apply for scrip. On the eve of the scrip commission in 1885, Deputy Minister of the Interior A.M. Burgess wrote in his instructions to the scrip commissioners that “care should be taken to give Treaty Indians distinctly to understand that they are not eligible to be enumerated as half-breeds.”⁵⁸ This was significant for a number of reasons. First, it suggested that either officials were already fielding inquiries, or they anticipated them. Second, and more importantly, it articulated an existing government perspective that there was a clear divide, legal or otherwise, between treaty Indians and Halfbreeds. But Burgess’ initial instructions to exclude Treaty Indians from scrip would not survive the year, and he would very soon contradict his own words. In fact, by the following year, the scrip commissioners were allowing a number of Indians to withdraw from treaty to take scrip. In short, over the course of one year, the department’s policy changed drastically. Treaty Indians seeking to be discharged so that they could apply for scrip were required to demonstrate two things: first, a certain ‘degree of civilization,’ which meant not living an ‘Indian mode of life’; and second, that they could support themselves. It was much easier administratively for

⁵⁸ A.M. Burgess to W.P.R. Street, 30 March 1885. LAC MG 29, Series E16, Vol.1, File 3.

Indian Affairs to withdraw an Indian to take scrip than to enfranchise him: unlike the enfranchisement policy, scrip grantees did not require monitoring or follow-up, nor were there clearly defined criteria to meet first. Nonetheless, the concept represented the same idea: individual allotment in exchange for the extinguishment of Aboriginal rights and title.

Burgess's instructions had, in fact, contradicted the 1884 *Indian Act* which made provisions for Indians to withdraw to take scrip. Prior to the 1884 act, the only clause dealing with overlap or transition between the two categories was in the 1880 Act:

No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family (except the widow of an Indian or a half-breed who has already been admitted into treaty) shall, unless under very special circumstances, to be determined by the Superintendent General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty; and any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed, as such, may be entitled to receive from the Government.⁵⁹

But in 1884, a minor amendment was made so that treaty Indians were no longer required to refund their annuity money; instead, they only had to sign a letter to withdraw from treaty.⁶⁰ As John A. Macdonald, then prime minister and Superintendent of Indian Affairs, noted, "It has been represented to the Department that it is desirable that half-breeds who are able and willing to support themselves should be allowed to give up their treaty relations with the Government, and by taking away the annuity, as provided in the old Act, the Government considered it was a bar to enterprise, for the half-breed would not have the same inducement to becoming self-supporting if obliged to give up his annuity."⁶¹ This change would, Indian Affairs hoped, provide an incentive to withdraw.

⁵⁹ SC 1880, 43 Vic., Cap. 28, sec. 14 [*Indian Act* 1880].

⁶⁰ SC 1884, 47 Vic., Cap. 27, sec. 4 [*Indian Act* 1884].

⁶¹ J.A Macdonald, 7 April 1884. Canada. *House of Commons Debates*, 1400.

Scrip quickly became a substitute for an ineffective Indian policy of assimilation. Although the Indian Act did not explicitly permit it, the Indian Department withdrew Indians to take scrip, even though the Department of Interior said they would not deal with treaty Indians. For instance, in June 1885, Indian Agent William Anderson of the Edmonton district authorized the discharge of 202 treaty Indians so that they could take scrip.⁶² In early 1886, Hayter Reed, Assistant Indian Commissioner, asked scrip commissioner Roger Goulet when the scrip commission would be arriving at Lac la Biche, since “quite a number of Indians have received their discharge from Treaty under the belief that their claims would be attended to at an early date.”⁶³ When the Commissioners arrived later that year, they withdrew 89 Indians from treaty.⁶⁴ There was clearly a disjuncture between Ottawa’s official policy and how it was executed on the ground. Not only did these actions contradict the Interior’s stated policy on treaty Indians applying for scrip, but it also conflicted with the Department of Justice’s interpretation of the Act. In a letter to Deputy Superintendent General Lawrence Vankoughnet, Deputy Minister of Justice George Burbridge stated that “the intention of the Act is to exclude half-breeds in Manitoba who have shared in the distribution of half-breed lands as being accounted as Indians.”⁶⁵ The intended aim of the *Indian Act*, then, was not to make provisions for treaty Indians to take scrip; rather, it was to prohibit scrip grantees from entering treaty. There was no legal condition, then, for a treaty Indian to withdraw to take scrip.

⁶² Report of W. Anderson, 26 August 1885. *CSP*, Vol. XIX, 49 Victoria (No. 4), 71. A schedule prepared by the Department of the Interior in October of 1885 showed that only 192 treaty Indians had been withdrawn from treaty for the purposes of applying for scrip, so the exact number is unclear. See “Schedule of names of Half Breeds who have withdrawn from Indian Treaty, together with the amount in each case deducted from the certificates issued to such Half-breeds by the N.W. Half-Breed Commissions,” N.O Côté, Secretary, North-West Half-Breed Commission to John R. Hall, Secretary of the Department of the Interior, 8 October 1885. LAC RG 15 D-II-3, Vol. 178, File HB 1106.

⁶³ Hayter Reed, Assistant Indian Commissioner to Goulet, 1 February 1886. LAC RG 10 Vol. 3595, File 1239, Pt.12.

⁶⁴ *CSP* Vol. XX, (No.6)1887.

⁶⁵ Burbridge to Vankoughnet, 4 December 1884. LAC RG 13 Vol. 616.

There were, of course, pragmatic reasons for this policy of treaty withdrawal to take scrip. Undoubtedly, some found it beneficial economically. There were other benefits to no longer being considered Indian. The post-rebellion atmosphere after 1885 made it increasingly difficult to be Aboriginal, especially in the prairies.⁶⁶ Hayter Reed, Assistant Commissioner in the Northwest at the time, made a series of recommendations designed to stifle Indian independence, hoping to eliminate any possibility of future outbreaks. DIA officials believed that one means of achieving this end was to separate Indians from ‘Halfbreeds. In that memorandum, Reed recommended that

All half-breeds, members of rebel bands, although not shown to have taken any active part in the rebellion, should have their names erased from the paysheets, &, if this suggestion is not approved of, by directing that all [half-breeds] belonging to any bands should reside on the Reserves, most of these half-breeds would desire to be released from the terms of the Treaty. It is desirable however that the connection between such people & the Indians be entirely severed as it is never productive of aught but bad results.⁶⁷

Both Edgar Dewdney, Indian Commissioner of the North-West Territories, and Macdonald approved this policy; the increased number of treaty withdrawals from 192 in 1885 to 602 in 1886 for the purposes of taking scrip over the next year was a demonstration of this approval.

But there was far more to this confused policy. It also represented a critical juncture in Aboriginal policy and racial thinking in Canada. Introduced strictly as a Métis policy in Manitoba, the scrip policy became part of a broader nineteenth-century federal Indian policy when it moved into the North-West in 1885. Scrip incorporated already legally defined ‘Indians’ into its jurisdiction, thus permanently altering their formal relationship with Canada and minimizing the Crown’s legal obligations to them and their descendants. Evidently, this policy of

⁶⁶ Heather Devine concludes that changes in Indian policy after 1885 made reserve life disadvantageous, and taking scrip “the most logical and palatable alternative.” Devine, *The People Who Own Themselves*, 193–194.

⁶⁷ “Documents: Memorandum for the Hon. the Indian Commissioner Relative to the Future Management of Indians,” in *Native Studies Review* Vol. 2, No. 2 (1986), p. 129 [Memorandum from Hayter Reed to Edgar Dewdney, 20 July 1885. LAC RG 10 Vol. 3710, File 19,550-3.

withdrawing treaty Indians for scrip was not a planned, formal aspect of either the scrip policy or Aboriginal policy. There were no clear guidelines governing treaty withdrawals, and Indian Agents were often uncertain about the proper course of action. In 1885, for example, Indian Agent Anderson asked for clarification, even after he had begun withdrawing Indians from treaty: “You will advise me how to act in the case of Treaty Halfbreeds who have withdrawn from the Treaty, and have left their families – or as the case may be, a part of their families in the Treaty. Are the families entitled to the land and improvements on the Reserve for the use of said family, also all the other privileges of Treaty Indians.”⁶⁸ Similar concerns were expressed by the Peace Hills Indian agent, who was unclear about the distinction between treaty ‘Halfbreeds’ and Indians.⁶⁹ The point is not so much that officials were unsure about policy, or had even made an error in not correlating a scrip policy under the Department of the Interior with Indian policy under the Department of Indian Affairs. Rather, the point is the nature of the ambiguity. It is of little surprise that there might be a lack of correlation among departments; it is of greater interest that the contradiction reflected uncertainty about how mixed-ancestry Natives would be categorized.

The confusion felt by officials was reflected in their requests for legal opinions from the Department of Justice. The Department of the Interior first sought out the Department of Justice’s interpretation on treaty withdrawals in December 1885, after agents had already granted 192 discharges to treaty Indians so they could apply for scrip. Burgess wrote Deputy Minister Burbridge asking if “those Half-breeds who have withdrawn from the Indian Treaty ... are

⁶⁸ W. Anderson to Indian Commissioner, 9 September 1885. LAC RG 10, Vol. 3595, File 1239, Pt.12.

⁶⁹ Indian Commissioner to Superintendent General of Indian Affairs, 7 July 1886. LAC RG 10 Vol. 3724, File 24,303-2A.

entitled to participate in the grant to Half-Breeds” – a question asked six months after the fact.⁷⁰

Burbridge responded that Halfbreeds could, indeed, be considered eligible for scrip at the Minister of the Interior’s discretion.⁷¹ However, he also noted,

That if the Half-breed woman who ceases to be an Indian because her husband, an [*sic*] halfbreed, on withdrawing from the Treaty ceases to be an Indian, is to be held entitled to share in the annuities, interest, moneys or rents of the bands or to have the same commuted, and also to have land or scrip as a halfbreed, she will be in a better position than an Indian woman married to a half-breed would be under the same circumstances, and that as a matter of fact the Indian title would in effect be twice extinguished.⁷²

This would in fact be the case for both Aboriginal men and women who were previously in treaty and then withdrew to take scrip.

By the commission’s next sitting in 1886, the changes in policy regulating Indian withdrawals from treaty to accept scrip had been formalized. Contrary to the terms of the 1885 Commission, in 1886 Burgess instructed Goulet to give scrip to those who had withdrawn from treaty. It was not until this point, then, that accepting applications from Indians who had withdrawn from treaty was officially recognized as part of the scrip policy. In fact, in 1886 and 1887, most of the scrip applicants were treaty Indians who had withdrawn.

The formalization of this policy allowing treaty discharges to take scrip met with some opposition from within the Department of Indian Affairs. T.P. Wadsworth, Inspector of Indian Farms and Agencies in the NWT, wrote the Indian Commissioner warning him of the great number of withdrawals that were being authorized. Wadsworth was of the opinion that such withdrawals were being granted haphazardly and far exceeded the Department’s initial projections.⁷³ Dewdney questioned the validity of the process, noting that many withdrawals

⁷⁰ Burgess to George Burbridge, Deputy Minister of Justice, 28 December 1885. LAC RG 13 Vol. 2248, File 98/1885.

⁷¹ Burbridge to Burgess, 15 January 1886, *Ibid.*

⁷² Burbridge to Burgess, 19 May 1886. LAC RG 13 Vol. 237, File 1886.

⁷³ T.P. Wadsworth to Dewdney, 7 July 1886. LAC RG 10 Vol. 3724, File 24,303-2A.

were being granted to Indians who had “always followed an Indian mode of life. They have never been regarded as being anything but Indians, and it was not to be expected that they would ever claim to be anything else; nor, it is thought, was it the intent of Parliament that legislation enacted for half-breeds should extend to them.”⁷⁴ His concern, in an attitude typical of the misguided sense of paternalism apparent in Indian Affairs at the time, was that such individuals would be throwing away their years of hard labour on their reserves in order to obtain “a few days of comparative prosperity, to be obtained from the sale of their scrip.”⁷⁵ Granting withdrawals without discretion, he believed, would result in a population of destitute Indians for whom the government would become responsible again sometime in the near future – or even worse, that they would “participate surreptitiously in the rations of such as are fed [treaty Indians], impoverishing them by doing so.”⁷⁶ Even more importantly, he understood that the Indian Act did not make provision for withdrawing Indians so they could apply for scrip.

However, Wadsworth’s objection signified more than one official’s concern with the projected failure of the policy of withdrawal. It demonstrated the underlying ambiguity about the policy of assimilation. If Natives were, in fact, to be assimilated, it made little sense to thwart the only process which had done so swiftly and successfully. This is poignant considering that Wadsworth and Dewdney were not alone in their objections. Lawrence Vankoughnet, Bishop Grandin, and Goulet, for instance – all key figures in late-nineteenth-century Aboriginal policy – expressed their objections. And they all expressed the same sentiment: those leading an ‘Indian mode of life’ should not be allowed to withdraw from treaty and take scrip.⁷⁷ Instead,

⁷⁴ Indian Commissioner to Superintendent General of Indian Affairs, 7 July 1886, *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Vankoughnet to Macdonald, 3 April 1886. LAC RG 10 Vol. 3723, File 24,303-2; Goulet to Burgess, 12 July 1886. LAC RG 10, Vol. 3724, File 24,303-2A; Bishop Grandin, St. Boniface, to Macdonald, 23 August 1886. LAC RG 10, Vol. 3788, File 43943.

assimilation was not the only goal here: officials still oscillated between desires to maintain racial segregation and the pressures to assimilate, regardless of the reasons behind it.

By the end of July 1886, Indian Affairs responded. It conceded that those leading an “Indian mode of life” should not be allowed to withdraw from treaty and that Wadsworth would accompany the Commission in an advisory capacity to help ascertain who fit that description. Until that point, no consensus had been reached for what constituted an ‘Indian mode of life. Given that this seemed to be a major criterion that distinguished Métis from Indians in government eyes, this was no small matter. In 1886, Wadsworth attempted to resolve this problem. He recommended a guideline for assessing withdrawal applications: first, agents should not grant withdrawals to those who still hunted for a living; and second, applicants would have to prove they were a ‘Halfbreed.’⁷⁸ This did little to solve the problem: hunting alone did not distinguish an ‘Indian’ from a ‘Halfbreed’; it was a subsistence economic activity pursued by both groups. And ‘proving’ heritage only required finding a friend or family member to swear on the applicant’s behalf. Since widespread racial mixing meant many Indians had European ancestors, this was hardly an effective test. This undoubtedly left manoeuvring room for an applicant in choosing a legal identity.

Along with his recommendations for treaty withdrawals, Wadsworth drew up a list of seventeen questions similar to those asked on the scrip application. Applicants were asked questions such as whether they had received rations under treaty, what possessions they owned, and how they expected to make a living if withdrawn from treaty. These questions were clearly designed to assess the applicant’s financial viability – not to determine their cultural identity. Indeed, Wadsworth was more concerned about whether individuals would create a financial burden on the Department. After satisfactory answers were received, a ‘withdrawal declaration’

⁷⁸ Wadsworth to Dewdney, 27 July 1886. LAC RG 10, Vol. 3724, File 24,303-2A.

had to be signed. The full declaration read: “I hereby forfeit all Indian rights. I agree to leave the reserve, to give up any house and all other improvements which I may have on the reserve without compensation, also any cattle or any implements received by one as an individual or as a member of the Band.”⁷⁹ Never printed as an official form, Wadsworth’s draft declaration ultimately served as the legal document that withdrew an Indian from treaty. This was, in fact, what the agent used as a treaty withdrawal agreement for the remainder of the North-West scrip commissions – a hand-written note signed by the Indian agent. This is a curious contrast to the three-page application, formal affidavit, and witness declaration (all pre-printed forms) required to apply for scrip. It was also a stark contrast to the enfranchisement process, which required applicants to meet literacy, moral, and financial criteria. Even then, enfranchisement was granted only after a successful three-year probationary period.⁸⁰

The criteria to approve a withdrawal required a judgement too subjective to constitute a uniform policy, and as such, there was disagreement among the Indian Agents, the scrip commissioners, and Wadsworth over who should and should not be granted a discharge.⁸¹ Wadsworth tended to grant discharges cautiously. However, the commissioners and the Indian agents more readily allowed treaty withdrawals. For instance, Goulet recommended withdrawals for treaty Indians who were considered “stragglers” – those who did not permanently reside on their designated reserve according to the Department.⁸² Either way, the debates over who should be withdrawn and who should not were really debates over racial ascription: who was Indian and who was Halfbreed. The difficulties commissioners and other officials had in deciding where to place mixed-ancestry Natives for the purposes of this policy were indicative of the ambiguity

⁷⁹LAC RG 10, Vol. 3724, File 24,303-2A.

⁸⁰ John L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy,” *Journal of Canadian Studies* 8, no. 4 (November 1973): 51–60.

⁸¹ LAC RG 10, Vol. 3724, File 24,303-2A.

⁸²Goulet to Burgess, 19 June 1886, *Ibid.*

that accompanied racial mixing everywhere. There was never an explicit set of criteria – legal, administrative, or otherwise – developed that would guide officials, nor could there be. Mixed-ancestry Natives could not fit neatly into a racial binary, no matter what their ‘mode of life’ might be.

Again, the government was not alone in directing this policy. Aboriginal people continued to live in accordance with their own cultural practices of identity formation. This became evident when, upon receiving a treaty withdrawal and scrip, individual Natives previously associated with a particular reserve continued to remain there, or tried to return after leaving treaty. But the permeability of the racial boundary that allowed treaty Indians to become scrip Halfbreeds did not always remain so. In several cases, there was no returning. One example demonstrates this point. A man, Thomas Bear, who was a Halfbreed in treaty in the Pas Agency in Manitoba and teacher at the Indian school, had withdrawn from treaty expecting to receive scrip. He did not, even though his sister did. He requested to be allowed to re-enter treaty, but the inspector would not allow it, “as he is quite able to support himself, and family, as a white man, and is inteligent [*sic*] enough to intitle [*sic*] him to all the privelages [*sic*] of a Canadian citizen.”⁸³ From the government’s standpoint, Thomas Bear had successfully achieved the kind of transition to ‘ordinary citizen’ that they had hoped for. There was no reason for them to allow him to return to the reserve. The racial boundary had been clearly demonstrated, in this case, by attaining a standard of economic independence.

By the time treaties were negotiated in the northern regions at the turn of the century, administrators demonstrated less concern with the struggle over racial ascription that had occupied them so much throughout the 1870s and 1880s. The evidence was increasingly difficult

⁸³ S. R. Marlare, Inspector of Indian Agencies, Lake Manitoba Inspectorate, Sifton, 14 January 1899. LAC RG 15 D-II-1 v. 621 File 230967.

to ignore: the boundary between Indian and Halfbreed had become permeable to the point of being meaningless. This was reflected in a new policy that saw scrip and treaty commissions acting in conjunction, thus avoiding the kinds of problems that plagued administrators in the 1880s. Treaties Eight, Ten and Eleven in 1899, 1906, and 1921 respectively became intertwined with the scrip process. Scrip commissioners accompanied treaty commissioners and awarded scrip coupons on-site, or later in Treaty Ten, after receiving approval from the Minister of the Interior.

Thus, a major change in perspective became evident by the 1890s. There was in many ways a reduction in the emphasis on 'blood. Administrators began to look at status, either Indian or Halfbreed, as one defined by the nature of an individual's relationship with the state. For instance, McKenna noted that:

It has been the custom to recognize proof of part white blood and a discharge from Indian treaty, as constituting a right to scrip. I have taken it that every one, irrespective of the proportion of Indian blood which he may have, who enters treaty becomes an Indian in the eye of the law, and should, therefore, be treated as an Indian both by the Department of the Interior and the Department of Indian Affairs; and that when he is discharged from treaty he becomes an ordinary citizen of the country, having no claims as an aboriginee [*sic*], all such claims having been extinguished by his accepting the benefits of an Indian Treaty up to the date at which he voluntarily surrendered them.⁸⁴

Those who were in treaty, then, were to be deemed Indians no matter what their ancestry. Increasingly, administrators were distinguishing between legal and racial designations. One did not necessarily equal the other.

Despite the changing attitudes, the ambivalence about race continued and was reflected in a debate over 'blood' and lifestyle. McKenna noted in a 1901 letter to Clifford Sifton, then Minister of Interior and Superintendent General of Indian Affairs, that "if we make an admixture of white blood a ground of discharging and giving scrip, it will be hard to close the issue of scrip

⁸⁴ Annex "A" to PC 1182, McKenna to Sifton, 6 June 1901. LAC RG D-II-1 Vol. 825 File 616753.

for the great majority of those in treaty have white blood.”⁸⁵ Contrarily, Indian Inspector Henry A. Conroy used a lifestyle criterion to grant scrip in 1905 to an applicant who, he stated never lived the “Indian life”.⁸⁶ Yet, in 1909, he granted an applicant scrip even though he “lives the Indian mode of life.”⁸⁷ In the latter case, he said that “the evidence shows that he is a halfbreed and entitled to scrip.” Neither the “evidence” nor the “Indian mode of life” was defined – a difficult, if not impossible, task. As McKenna noted in a letter to Sifton in 1903, “it is difficult to draw any line between the modes of life”.⁸⁸ Yet, he referred to one particular treaty Indian as “a man one would never think of classing as an Indian.”⁸⁹ ‘Mode of life,’ a vague and undefined descriptor for race, had been frequently employed and manipulated throughout the duration of the scrip policy in an attempt to negotiate the uncertainties of racial boundaries that policy necessitated. However, it ultimately confused the process of racial categorization and exposed the problematic nature of the process itself.

The ambiguity of racial classifications and attempts to draw a line between ‘Indians’ and ‘Halfbreeds’ demanded the department’s continual review of individual cases that perplexed decision-makers and exposed the underlying problems of racial classification. One particular case in 1903 exemplifies the point. Marie Rose Paul of Lesser Slave Lake applied for scrip. She identified herself as a Halfbreed to the commission, was married to a Halfbreed, but her father was a treaty Indian, though she never had taken that status. McKenna’s response was that “I cannot see how we can advisedly do otherwise than concur in Mr. Conroy’s classification of her and give her the benefit of the settlement as a Halfbreed.”⁹⁰ Yet, according to the rules of the

⁸⁵ McKenna to Sifton, 16 March 1901. LAC RG 15 D-II-1 Vol. 782 File 555680 part 1.

⁸⁶ N.O. Cote to Minister, 4 April 1905. Ibid.

⁸⁷ Conroy to Minister, 9 January 1909. LAC RG 15 D-II-1 Vol. 782 File 555680 part 1.

⁸⁸ McKenna to Sifton, 13 February 1903. Ibid.

⁸⁹ Ibid. re: Colin Johnston.

⁹⁰ Ibid.

Indian Act, she should have been classified as a status Indian. In this and similar ways, racial production and reproduction were ongoing processes in the context of Canadian colonialism.

Also by the turn of the century, administrators had more clearly defined the legal status of Halfbreeds, even if they continued to struggle with the contradictions of race. From a legal standpoint, as McKenna noted in 1902, “when the Halfbreed title is extinguished, the Halfbreed family takes the status of *ordinary citizens* of the country.”⁹¹ Yet, as the twentieth century would demonstrate, they never really took their place as ‘ordinary citizens of the country,’ and instead, continued to battle various, even if subtle, forms of discrimination that would force the suppression of their Native identity. As with the recognition by census officials and Indian Affairs administrators, by the same period race became employed as a legal status. This, however, did little to cover the fact that administrators could do nothing to resolve the contradiction between a social reality that excluded mixed-ancestry Natives from the dominant culture, and an opposing legal reality which excluded them from being Indian.

The relationship between Aboriginal title and Aboriginal status further demonstrates the problems of becoming ‘ordinary citizens. For Indians, their status is not tied to the extinguishment of their title: officially, they continued to be Indians after their title was extinguished, usually by treaty. Halfbreeds, on the other hand, lost their legal status upon the extinguishment of their title, achieved through scrip. Yet, the extinguishment of native title required administrators to affirm that they were native (Native title cannot be extinguished if one is not Native). As John R. Hall, secretary, noted in 1898, “It is solely because of his Indian blood that the right of the half-breed arises; but for this he would have no claim to be recognised. The Indian gives up his right for the benefits assured him by Treaty. If the Half-breed goes into Treaty he then loses his status as a Half-breed, becomes an Indian and has his claim satisfied in

⁹¹ McKenna to Minister, 13 February 1902. LAC RG 15 D-II-1 Vol. 491 File 138557. Author’s italics.

that way. If he does not accept Treaty, his right – because of his Indian blood – is satisfied by an issue of scrip.”⁹² If Hall was aware of the contradiction, he did not flinch. Administrators staunchly defended their ideas of race, despite their ambiguity, with legal arguments that usually complicated already inconsistent definitions. The process of de-Indianization took place in Canada as part of this process that sought to separate racially ambiguous subjections from the ‘clear’ category of Indian. Once that separation was complete, and once the racially ambiguous subjects were identified and defined as ‘Halfbreeds,’ policy created circumstances by which these mixed-ancestry Natives would no longer be Natives in an official capacity.⁹³

The division of mixed-ancestry Natives from ‘Indians’ has been a persistent one. If racial ambiguity was not enough to make the situation impossible, administrators were also juggling competing and contradictory concerns. They had to deal with the legal implications of their actions, not to mention the disparity between the objectives and directives of the department of Interior with the Department of Indian Affairs. Definitions of Halfbreed changed in accordance with personal views, policy and legal obligations, and regionally as different lifestyles altered views on racial classification. Miscommunications and disagreements between higher and lower officials also meant that government intentions were not always carried out to their fullest extent, if at all.

Conclusion

There is little consistency that can be drawn from Indian policy and its specific treatment of mixed ancestry Natives. However, a pattern does emerge in examining the official national discourse of mixed race over a longer period of time. Between the first Indian Act predecessor in

⁹² Hall to B.E. Chaffey, Barrister, 28 February 1898. Ibid.

⁹³ See also Ken Coates and W.R. Morrison, “More Than a Matter of Blood: The Federal Government, the Churches and the Mixed Blood Populations of the Yukon and the Mackenzie River Valley, 1890-1950,” in *1885 and After: Native Society in Transition*, ed. F. L Barron and James B Waldram (Regina, Sask: University of Regina, Canadian Plains Research Center, 1986), 253–278.

1850 and the end of scrip in 1921, the cumulative discourse about mixed-ancestry Natives suggests that a goal of Aboriginal policy was to separate and redefine mixed-ancestry Natives in line with the ‘colonizer’s model of the world,’ to use the words of anthropologist and geographer J.M. Blaut.⁹⁴ On this point, administrators in Canada were most consistent, even if they oscillated between categorizing mixed-ancestry Natives as ‘white’ and as ‘Indian. But even more so, this process exemplified a commitment to continuing segregation, even if that operated simultaneously with and in contrast to stated goals of assimilation. Canada was not necessarily always trying to eliminate Indians: it was trying to eliminate racial ambiguity. Some policy makers could conceive of an ethnic category that did not constitute one of those two sides of the racial binary but they could not recognize mixed-ancestry Natives as anything more than a transitional category between two ‘real’ and permanent ones. Certainly, policy expressed ambiguity and, over time, demonstrated a fundamental incompatibility of a fluid and varied population of mixed-ancestry Natives that would not fit neatly into racially determined categories, no matter how hard administrators tried.

In contemporary Canada, there is a clear divide between ‘Indian’ and ‘Métis’ in both a cultural and a legal context. Legislation, the courts, and even the constitution have clarified this division and, since the 1880s, the Indian Act has prohibited individuals legally identifying as both. Aboriginal political organizations observe this division as well. However, while naturalized in a contemporary context, it is a relatively recent phenomenon and one that has been intentionally imposed through law. While Métis and First Nations have always been culturally distinct in some sense, this was not the case for all mixed-ancestry Natives, and this was not the case for legal identities. In fact, it has been through Aboriginal policies that this division has

⁹⁴ James M. Blaut, *The Colonizer’s Model of the World: Geographical Diffusionism and Eurocentric History* (New York: Guilford Press, 1993).

been made. Tracing the evolution of how this division occurred in law allows us to evidence the discourse on racial mixing and hybridity throughout the kinds of laws and policies we thought we knew so well as 'Indian' policy.

Chapter 5 - US: Measuring Blood

On the morning of May 5th in 1910, Osage Council Secretary Harry Kohpay stood in front of the House Committee on Enrollment during the initial phases of the Osage allotment hearings. The committee had been debating the addition of some 37 people to the Osage roll, an investigation which had been going on intermittently since 1896. The Osage council objected to these additions, and Kohpay along with other members of the tribal council were invited to present their case. Kohpay expressed his disapproval over the government's attempt to decide tribal membership:

It is amusing to see and hear the arguments made before the Indian committees of both Houses of Congress, by the attorneys, ex-Indian agents, ex-government doctors, etc., representing the applications; their untiring efforts to unearth something to convince you gentlemen that they know who belong on the Osage rolls, because of their knowledge of the records and using the knowledge of the Indians that they have gained while they were in the service pretending to protect the interests of such Indians.¹

The issue here was membership – especially the membership of mixed-ancestry Natives. As was common practice during the allotment era, officials created a roll for the purposes of verifying eligibility for allotment: those on the roll were eligible for an allotment (and thus, federally recognized Indians); those not, were ineligible. This system was intended to simplify the allotment process, to help protect against fraud, and to ensure a fair standard was in place – principles which were just as quickly transgressed as they were conceived – since so much was at stake. The value of land had continued to increase and the prospect of fraud and speculation, with it.² Reservation allotments had been particularly susceptible as individuals outside of the tribal community made claims on tribal lands to which they were not entitled. Tribal councils

¹ Statement of Harry Kohpay, Secretary of the Osage Council, Osage Enrollment Hearings, House of Representatives, 61st Cong., 2nd sess., on HR 17819 and HR 21199, 1910, Washington D.C., 39.

² There are numerous studies on allotment which discuss the fraud and speculation that could accompany it, especially in areas where land was in higher demand. For a general discussion, see especially D. S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1973) and Wilcomb E. Washburn, *The Assault on Indian Tribalism: The General Allotment Law (Dawes Act) of 1887* (Philadelphia: Lippincott, 1975).

raised formal objections to what they believed were the mistaken, and sometimes even fraudulent, inclusion of individuals who were not part of the tribe. In almost all cases, the contested individuals were of mixed ancestry. This is precisely what had happened with the Osage, and why Kohpay stood in front of the committee.

But the Osage, as Kohpay went on to explain, had (and have) their own system for identifying members, one which would allow them to recognize each other even after years of separation. The Osage system of identity was based on a bifurcated community: two villages, each with seven subdivisions or ‘lodges. Children were named in accordance to the village and lodge in which they were born. All male children of each lodge were named from a limited set of names, as were females. Thus, there were only twenty-eight groups of birth names for the entire community.³ Accordingly, individuals could confirm their rightful membership in the Osage community by simply recalling their birth names. As Kohpay explained to the committee, this system served as the real proof of Osage membership: not blood quantum, and not appearance on tribal rolls or in other government documents.⁴ For the Osage and other tribes, these were not debates over racial purity or blood quantum, as they were for government officials. Membership was not a matter of race or biology: it was a birthright verified by a formal kinship system. Consequently, ‘mixed blood’ was not a consideration in the determination of membership; it was not in itself a cause for inclusion in or exclusion from the community.

Government officials did not share this view. Race, instead, was something that was identifiable by ‘blood’ and verifiable by documentation, the equivalent of scientific proof for a bureaucratic system that required recordable evidence just as the scientists studying race did. It

³ Each lodge was further subdivided, but Kohpay did not share these details with the committee, perhaps because this was a protected tradition about which outsiders were not to have complete knowledge.

⁴ Statement of Harry Kohpay, Secretary of the Osage Council, Osage Enrollment Hearings, House of Representatives, 61st Cong., 2nd sess., on HR 17819 and HR 21199, 1910, Washington D.C., 39.

could exist in parts – in quantum – and it did matter. It could mean a positive inclusion (the presence of Indian blood in any capacity was proof of Aboriginality) or a negative exclusion (the lack of enough Indian blood meant an individual was not a ‘real’ Indian). Furthermore, it could be proven or verified with documentation, usually by the previous inclusion on tribal rolls, or descent from those named on those original rolls. Consequently, an individual of tribal ancestry could, from the commissioners’ perspective, claim a right to membership even without having lived with the tribe or having any association with, social ties to, or acceptance from the tribe. Indeed, the descendants of members who had left the tribe decades ago could come to claim an allotment. Essentially, the debate between government officials and tribal authorities was a matter of biology versus culture.

In short, there was no method for dealing with hybridity in a binarized system. The debates that ensued from these challenges and the process of establishing legally recognized membership criteria were not simply indicators of disagreements between government officials and tribal authorities over how membership should be decided or who had the authority to do so, although this was certainly a factor. They were also indicators of the ‘problem of mixed-race’; that is, the destabilizing effect that mixed-ancestry Natives had on racial categories. The debates also demonstrated the dilemma of race faced by officials as they increasingly assumed power over tribal membership: the ‘mixing’ that existed in tribes and larger society, managed with kinship-based identity-constructions, created ambiguity for government officials and the legal categories they were attempting to apply. Officials were unwilling or unable to negotiate the discrepancies between Indigenous systems and race-based government policies. Between 1887 and 1934, this dilemma manifested itself in Native American policy in two ways: in the power

struggle between tribal and government officials over membership; and as the production of a mixed-race discourse which demonstrated the increasing concern over racial ambiguity.

As in Canada, the desire to eliminate this racial ambiguity drove Native American policy just as much as the goal of assimilation and the pragmatic concerns to free up land. Throughout the nineteenth century, federal authorities in the US worked to gradually redefine the terms of tribal citizenship by replacing kinship systems with race-as-biology structures and to develop legal definitions of ‘mixed blood’. Although they were not entirely successful until 1934 when blood quantum was officially and uniformly enacted, the battle was in actuality waged in the decades prior. By mere practice, if not by actual definition, tribes exercised self-government and sovereignty rights during the treaty era by deciding their own memberships.⁵ Significantly, this meant that legal definitions of ‘Indian’ or ‘mixed blood’ were unnecessary. Governments had fairly consistently (though not entirely without exception) recognized the tribal control over their membership, which included mixed-blood individuals, but then attempted to usurp that authority in the allotment era. Understanding the emergence of blood quantum criteria and the mixed-race discourse that accompanied it in the late nineteenth century, then, requires an understanding of the relationship between Indigenous peoples and the American state in the early nineteenth century, and thus begins with treaties.

Treaties

In all, there were close to 400 treaties and agreements in the US. Relatively few of them explicitly acknowledged mixed-ancestry Natives, but they are important because of the sense they give about the place of mixed-ancestry Natives in treaties and communities by both tribal and government authorities. There are two important considerations about these treaties. The first

⁵ There is a debate in the literature regarding the nature of tribal authority and the US’s recognition of it. See especially Pommersheim, *Broken Landscape*; Quinn, “Federal Acknowledgment of American Indian Tribes.”

speaks to the fur trade geography. Historians have long made the argument that the fur trade has produced new and distinct identities, though admittedly not all resulted in ethnogenesis as did the Canadian Métis. Nonetheless, the fur trade produced pockets of mixed-ancestry groups with their own unique identities, separate from their parent tribes, though still related. Accordingly, the treaties which acknowledged mixed-ancestry Natives as groups separate from the tribe reflected the geography of the fur trade and the identities it produced. It is not surprising then that the bulk of the treaties which explicitly included concessions for mixed-ancestry Natives occurred in what were, historically, fur-trade areas: the Great Lakes region, the Midwest and Montana.

The second interesting point stemming from the treaties is the silence in the vast majority of them about mixed-ancestry Natives. In the text of most treaties, mixed-ancestry Natives were not mentioned or singled out. However, the absence of any reference to mixed-ancestry Natives in the bulk of treaties and agreements does not preclude their presence in those tribes. As many officials noted, mixed-ancestry Natives within tribes were common. Francis A. Walker, who served as Indian Affairs Superintendent in the 1870s, commented on these demographics. He noted that “Half-breeds, bearing the names of French, English, and American employees of fur and trading companies, or of refugees from criminal justice ‘in the settlements,’ are to be found in almost every tribe and band, however distant.”⁶ But because blood quantum was not a major determining membership criterion for most tribes, and because tribes controlled their own membership during this period, the presence of mixed-ancestry Natives did not always warrant discussion among treaty commissioners – an apt example of ‘silent archives. And where there was discussion, treaty records show no indication that officials contested the requests of chiefs to include mixed-ancestry Natives.

⁶ Francis Amasa Walker, *The Indian Question* (Boston: J.R. Osgood and Co., 1874): 96.

The widespread presence of mixed-ancestry Natives as tribal members is also well supported by agency statistics later in the post-treaty period. Numerous reports from agents across the country demonstrated, either formally through detailed census counts or informally through general tallies, that mixed-ancestry Natives were present among tribes. This presence is recorded, not only in ‘expected’ places, like areas of intense fur trade activity throughout the Great Lakes and Midwest, but also in other locations, like Oregon, Oklahoma, Kansas, Nebraska, and Iowa, places where treaties had not explicitly acknowledged their presence. Census information, however, is highly inconsistent among agencies across both time and space, and one can often glean only a general sense, not specific details. Some agents offered detailed counts, including an individual breakdown of each person’s blood quantum, gender, and age, while others offered only final tallies, without any detail. The interesting point, then, is not that mixed-ancestry Natives existed, but that they were not always singled out or distinguished from other tribal members by government officials.⁷ As would be evidenced by specific treaty terms, mixed-ancestry Natives could occupy a range of identities based on their cultural affiliations, lifestyle choices, and kinship ties. This would be contrasted in the allotment era by the application of a stricter biological criterion by government officials.

Those treaties that do explicitly acknowledge mixed-ancestry Natives tell us much about how both tribes and government officials thought about mixed-ancestry Natives. They also suggest some important conclusions about mixed-ancestry Natives, identity, and belonging. First, tribes retained authority over membership. Although government officials expressed their own opinions about eligibility, and even attempted in some cases to assert their views, tribes’ decisions were for the most part respected. Second, the maintenance of tribal relations through kinship, residence, or even geographic proximity determined membership and thus, rights to

⁷ United States. Office of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs*, 1885-1907.

inclusion in treaties. Third, race alone was not a reason for exclusion as far as tribes were concerned: mixed-ancestry Natives could be considered equal parts of the tribe just as they could be considered distant and unequal relations with limited, finite rights to tribal property and assets. Finally, while government officials generally observed the terms of tribal membership criteria, race still mattered. In fact, officials attempted to introduce an early form of the blood quantum rules that would later make up the basis of legal identity in the post-1934 period. The differences between how government officials viewed identity and how Aboriginal people viewed identity would be highlighted by debates over eligibility. It is in this way that the tensions over an official mixed-ancestry Native identity first emerged.

That race alone was not the sole criterion for membership is indicated by the varying degrees to which tribes included their mixed-ancestry Native kin. Inclusion was not uniform, just as mixed-ancestry Natives themselves were not homogenous as a group. In fact, tribes distinguished among their mixed-ancestry Native kin, demonstrated by the diversity of relations and categorization of them in the various treaty concessions. There were roughly three ways in which mixed-ancestry Natives might be included in treaties and agreements: as full members, equal with ‘full bloods’; as a separate, distinguishable group with reduced concessions; and as individuals, who might either have some relation to the tribe, or to whom debts, acknowledgements, or gratitude were owed. In all three situations, though, inclusion came at the request of tribal authorities, and was approved. This is what makes US treaties and agreements such a contrast to Canadian ones: the demands and wishes of tribal authorities regarding mixed-ancestry Natives were respected and granted.

Government officials, too, might differentiate among various mixed-ancestry Native groups, but with a different set of criteria. Ottawa and Chippewa treaties around the Great Lakes

offer some of the earliest indications about the role mixed-ancestry Natives would play in policy and the contrasting ways in which government and tribal officials would view that role. The 1836 treaty is particularly significant, not only as one of the earlier major land cession treaties with the US, but also as one of the first treaties to explicitly include concessions for mixed-ancestry Natives. In this case, their “half-breed relatives” were to receive a cash payment from a \$150,000 fund for their share in the rights of the land being ceded to the United States.⁸ That payment was to be divided among those eligible according to their degree of relationship with the tribe.

The challenges commissioners would face with this distribution and with determining eligibility were two-fold. First, commissioners needed to distinguish the eligible from the ineligible. Fraudulent claims by individuals not actually related to the tribe or resident in the territory were a major concern for the commissioners. There needed to be measures taken to protect lands from fraudulent claims, but there also needed to be a system to ensure everyone was properly counted – the second problem commissioners encountered. The half-breed payment was a one-time concession, and individual payments were calculated by dividing the number who were eligible by the total amount of the fund. If someone missed the census count, there would be no recourse or remedy: once the fund was spent, there could be no concession. In addition, officials sometimes distinguished a confusing array of half-breed ‘classes’ based on blood quantum. Instructions from C.A. Harris, then Commissioner of Indian Affairs, to treaty commissioner John W. Edmonds indicated that half-breeds were to be divided into three classes, one-quarter, one-half, and three-quarters respectively. Payments would be calculated accordingly: the more ‘Indian blood,’ the higher the payment. However, the Chippewa objected. Not all mixed-ancestry Natives were, from their perspective, eligible to share in the benefits of

⁸ “Treaty with the Ottawa and Chippewa, 1836,” Kappler, *Indian Affairs: Laws and Treaties*, v. 2, 450-456.

the land sale. Instead, eligibility required tribal connections and, as the text of the treaty noted, residency: eligible members had to be living within the boundaries of the ceded lands. As Edmonds soon found out, the Chippewa understanding of half-breed “included those who were akin to the Indians and who had descended in part from white ancestry.” Edmonds did not agree. Concerned that fraudulent claims would be made by anyone claiming Indian ancestry, he decided to admit only those “one of whose parents or grand parents was of pure Indian blood.”⁹

In his negotiations with the Chippewa, Edmonds began to recognize the difference between government and tribal views of race and membership. The government’s view of race as something to be determined by blood quantum stood in stark contrast to a tribal view where the importance of family connections and tribal association determined membership and belonging – what the Indians had meant when they referred to individuals as “akin.” It quickly became apparent to Edmonds that half-breeds could just as easily reside among the Chippewa and be considered full members of the tribes as they could adopt a ‘white, civilized’ lifestyle. This translated into policy considerations. The differing classes in which half-breeds were to be categorized were redefined to reflect their connection to the Chippewa. As Edmonds explained to Harris, “Those who were ‘held in highest consideration by the Indians,’ who had ‘the greatest capacity to use and take care of property and consequently the most power to aid their Indian connexions’ were to constitute the first Class – those less so the second Class, those least so, the third Class.”¹⁰ Whereas these classes had originally been constructed based on blood quantum, they now became based on degree of relationship – a decision in which the respective chiefs would be instrumental. This treaty would serve as a precedent for others.

⁹ Edmonds to Harris, 9 February 1836. “1836 Census of the Mixed-Blood Indians of Michigan,” Special Files of the Office of Indian Affairs, 1807-1904, M574, NARA Roll 23, accessed 17 May 2012,

<http://www.accessgenealogy.com/native/census/index.htm>

¹⁰ Ibid.

The issue over “classes” of mixed-ancestry Natives was widely contested and far from decided. Despite the conclusions that Edmonds reached, the idea of blood quantum never entirely disappeared. The practice of dividing mixed-ancestry Natives into classes based on their blood quantum was the topic of much debate in Congress over the next few years – a crucial and busy time in treaty-making. Particularly as commissioners worked their way through the Great Lakes tribes, the issue repeatedly presented itself. Commissioners continued to contemplate awarding treaty concessions based on the blood quantum of mixed-ancestry Natives who might be considered entitled. For instance, a similar division was made for the distribution of a cash fund to half breeds related to the Winnebago in the 1837 treaty. As with the Chippewa, commissioners also initially divided the group into three classes for this purpose.¹¹ But, as Indian Agent General Joseph M. Street noted in 1838, this kind of schema was never the intention of either Native Americans or government officials:

The only question that could arise under the treaty was between the amounts to be granted to half and quarter breeds: whether half-breeds should draw the same as quarter-breeds, or if half breeds would not be entitled to full shares, and quarter-breeds to half shares. But no one, from reading the treaty, will say that the commissioners, or the Indians who made the treaty, intended any thing but the *equal* division amongst *all their relations* not further off *than quarter-blood*, of \$100,000, share and share alike. The idea of any classification of the relations was never thought of by the Indians; and a classification which has grown out of this measure, giving to a quarter-blood a full share, and to a half-blood less than half the amount given to the quarter, is *monstrous*; and to the Indians, especially those who make the treaty, unsatisfactory.¹²

Kinship was acknowledged as the determining factor in the end, but the language of race and blood quantum had continued to frame a counter ideology that would only grow over the next few decades.

¹¹ Joseph M. Street, Execution of Treaty with Winnibego Indians, Congressional Serial Set 349, H.doc. 229, 28 February, 1839, 56.

¹² General Street to Major Hitchcock, Congressional Serial Set 349, H.doc. 229, 10 December, 1838, 56. Emphasis in original.

Although the matter would never really be laid to rest, Attorney-General Caleb Cushing rendered an opinion in 1856 – the closest thing to a uniform policy the BIA would see until 1934. According to the Secretary of Interior’s report of the matter in 1890, Cushing held that “Half-breed Indians were to be treated as Indians in all respects, so long as they retained their tribal relations; that when the question of mixed blood arose there was no intrinsic precision in the expression ‘a white man,’ and referred to the fact that there were men of indubitable citizenship in various parts of the country who had Indian blood in their veins.”¹³ With some exceptions aside, then, Aboriginal determinations of identity based on their kinship ideologies would remain the dominant factor in determining eligibility. The matter was never really resolved for government officials, but the American custom of dealing with tribes as nations persisted throughout the treaty era. So, even though blood quantum was seeping its way into policy, it did not yet override the tribe’s authority over its own membership. Kinship trumped race, and the final decision about eligibility came down to residency and tribal relations.

Later Chippewa treaties reflected the resolutions worked out in 1836. Both the unratified 1863 and ratified 1864 Chippewa treaties granted land scrip to any mixed-blood “who is related by blood to the said Chippewas of the said Red Lake or Pembina bands who has adopted the habits and customs of civilized life, and who is a citizen of the United States, a homestead of 160 acres of land.”¹⁴ This treaty reflected the acknowledgement of Chippewa systems of identity: those mixed-ancestry Natives living among the tribe would be considered full members, while those living separately and not part of the Chippewa culture would receive a limited, finite form of compensation. They would not be eligible for further consideration in tribal interests, thus officially severing their connection to the tribe.

¹³ *Annual Report of the Commissioner of Indian Affairs* 1890, 74.

¹⁴ Treaty with the Chippewa, Red lake and Pembina bands (1863), Kappler, *Indian Affairs: Laws and Treaties*, 855.

Other treaties followed suit, though the terms for mixed-ancestry Natives might vary. Concessions might include compensation in the form of cash or an allotment of land, either title to lands they already occupied or new allotments in the form of scrip. As with the allotments in the 1836 Sauk and Fox treaty, individual mixed-ancestry Natives would receive an allotment of land in tribal territory, but outside of the main reserve. Similar concessions for mixed-ancestry Natives could be seen in an 1859 treaty with the Kansa tribe. Article 9 granted 40-acre allotments to “the children of their half-breed relatives.”¹⁵ Significantly, those lands would not be alienable: like other Indian lands, they could only be disposed of to the US federal government or revert back to the tribe. Treaty concessions to mixed-ancestry members of the tribe would be awarded as long as the members remained part of the tribe, and as long as the land would always remain ‘Indian’ land or tribal property. In other words, those who separated themselves physically or culturally from the tribal entity lost their claim to its property.

Another situation of allotment concessions, in this case, land, to mixed-ancestry Natives occurred in the 1865 Osage Treaty. Article 14 held that “the half-breeds of the Osage tribe of Indians, not to exceed twenty-five in number, who have improvements on the north half of the lands sold to the United States, shall have a patent issued to them, in fee simple, for eighty acres each, to include, as far as practicable, their improvements, said half-breeds to be designated by the chiefs and head-men of the tribe.”¹⁶ As had become common practice, it was tribal authorities, not government officials, who decided which mixed-ancestry Natives should be granted treaty concessions.

Land was not the only way to acknowledge kinship ties in treaties: money was also awarded to mixed-ancestry Natives. An 1842 Chippewa treaty in Wisconsin set aside \$15,000 to

¹⁵ Treaty with the Kansa Tribe (1859), *Ibid.*, 802.

¹⁶ Treaty with the Osage (1865), *Ibid.*, 881.

be divided among “their half breed relatives.”¹⁷ Another 1836 treaty also set aside money for mixed-ancestry Natives associated with the Ottawa tribe. Article 6 of the Treaty with the Ottawa held that \$150,000 would be set aside as a fund for mixed-ancestry Natives in lieu of a separate reservation. The article also noted that “no person shall be entitled to any part of said fund, unless he is of Indian descent and actually resident within the boundaries described in the first article of this treaty,”¹⁸ suggesting that proximity to tribal territory was a criterion of eligibility. As with earlier treaties, officials continued to note how relations with the tribe could vary, and awarded treaty concessions relative to that relationship. Here, the terms stated that, “The commissioner shall call upon the Indian chiefs to designate, if they require it, three classes of these claimants, the first of which, shall receive one-half more than the second, and the second, double the third. Each man woman and child shall be enumerated, and an equal share, in the respective classes, shall be allowed to each.”

The acknowledgement of mixed-ancestry Natives in treaties by their tribal relatives was not always a recognition of their membership, and further suggests that ‘blood’ did not guarantee membership. Several treaties granted concessions to individuals who may have been related by blood, but not considered eligible tribal members. For instance, an 1836 Ottawa treaty granted a provision of money (\$48,148) to specific individuals of mixed ancestry as an expression of gratitude, not of legal entitlement. Article 9 of the treaty noted that, “Whereas the Ottawas and Chippewas, feeling a strong consideration for aid rendered by certain of their half-breeds on Grand River, and other parts of the country ceded, and wishing to testify their gratitude on the present occasion, have assigned such individuals certain locations of land, and united in a strong

¹⁷ Treaty with the Chippewa (1842), Kappler, *Indian Affairs: Laws and Treaties*, 543.

¹⁸ Treaty with the Ottawa (1836), *Ibid.*, 452.

appeal for the allowance of the same in this treaty.”¹⁹ It was also stipulated that this latter class (the individuals mentioned in Article 9) would have no further claim to tribal assets, including funds or reservation lands. Thus, these individuals were not really considered legitimate members of the tribe, though there may well have been a distant kinship tie. The same scenario was repeated in the 1860s among the Osage. Concessions to individual mixed-ancestry Natives as shows of gratitude were included in the 1865 treaty. Article 6 stipulated that one particular mixed-ancestry Native, Charles Mograin, would be offered one section of land “in consideration of the long and faithful services rendered” by him.²⁰ Mograin had, it seems, lived with the tribe for some time, congruent to their lands. In another example, two adult mixed-ancestry Natives were granted 640 acres of land each by the terms of the 1861 Arapaho and Cheyenne treaty in Kansas Territory.²¹ An 1854 Omaha treaty granted \$1000 to a half-breed, Lewis Sounsosee, for a debt the tribe had not been able to pay.²² There were a number of circumstances, then, under which mixed-ancestry Natives might be included in a treaty. Those circumstances were clearly dictated by tribal authorities, not government officials. Furthermore, those varying circumstances under which mixed-ancestry Natives were included demonstrate that their membership was determined by factors outside of their racial composition.

Another way in which mixed-ancestry Natives might be acknowledged is through concessions made especially for mixed-ancestry children. For instance, an 1836 treaty with the Sauk and Fox ceded lands in Missouri. The treaty made specific provisions for seven individuals who had mixed-blood children. Each received \$1000 “for the use and benefit” of their children. The money was to be set aside so that the money and interest from it could “be expended for the

¹⁹ Treaty with the Ottawa (1836), *Ibid.*, 453.

²⁰ Treaty with the Osage (1865), *Ibid.*, 880.

²¹ Treaty with the Arapaho and Cheyenne (1861), *Ibid.*, 811.

²² Treaty with the Omaha (1854), *Ibid.*, 613.

benefit of the children as said agent shall deem proper and necessary” when they turned twenty.²³ Such concessions might then be considered an acknowledgement of some small, limited interest in the tribe, although the terms resembled an inheritance more than a right.

However, mixed-ancestry Natives could also be counted as equal members of the tribe, as can be seen in both the 1868 Crow treaty in Montana and the 1868 Gros Ventres treaty. They both included the same clause for mixed-ancestry Natives which read: “The half-breeds of said tribe shall share equally per capita with the Indians aforementioned in the distribution of annuity goods, and that the said tribe of Indians shall have the right to select and appoint a proper and suitable person to assist in the distribution of annuity goods, and see that they are distributed fairly and equally.”²⁴ This placed mixed-ancestry Natives on equal footing with other tribal members – not entirely uncommon, but not always explicitly acknowledged in the text of treaties. One, then, did not require a certain blood quantum to be considered a tribal member or to share equally in the tribe’s property.

As became increasingly evident in the treaty stipulations, residence was just as important as kinship, for both Aborigines and government. In many treaties where scrip was offered to mixed-bloods as their compensation, only those living in or near the tribe were considered eligible. A typical example in this regard is the 1854 Chippewa treaty of Lake Superior. In that treaty, mixed bloods were considered part of the tribe, albeit somewhat separately from tribal members. They received compensation in the form of scrip (80 acres), although this was not settled until some years later.²⁵ In the process of administering the scrip, though, administrators

²³ Treaty with the Sauk and Fox Tribe (1836), *Ibid.*, 477.

²⁴ Agreement with the River Crow Tribe of Indians (1868), *Ibid.*, 716; Agreement with the Gros Ventres Tribe of Indians (1868) (Unratified), *Ibid.*, 706.

²⁵ The commission dealt with a number of problems in issuing this half-breed scrip, but most important was the difficulty in setting the parameters of eligibility. The matter was debated well into the 1870s after the discovery of a number of cases of fraud. In the end, it was decided that applicants must prove their eligibility by demonstrating a “proof of their residence among or contiguous to the Indians.” Issuance of scrip to half-breeds of mixed-bloods

asked questions about eligibility that were similar to the kinds of questions encountered by Canadian scrip commissioners on late nineteenth-century prairies. In the end, the Indian Office decided that the terms or definitions should not be strictly adhered to.

There were other instances when residency was used as a criterion for participation in tribal treaty rights. One such example was the 1867 Chippewa treaty. Article 4 stipulated that “no part of the annuities provided for in this or any former treaty with the Chippewas of the Mississippi bands shall be paid to any half-breed or mixed-blood, except those who actually live with their people upon one of the reservations belonging to the Chippewa Indians.”²⁶ The 1858 Treaty with the Ponca made a similar stipulation, and even specifically articulated that those who left the tribe would receive limited concessions:

The Poncas being desirous of making provision for their half-breed relatives, it is agreed that those who prefer and elect to reside among them shall be permitted to do so, and be entitled to and enjoy all the rights and privileges of members of the tribe; but to those who have chosen and left the tribe to reside among the whites and follow the pursuits of civilized life, vis: [lists 8 people], there shall be issued scrip for 160 acres of land each, which shall be receivable at the United States land offices in the same manner, and be subject to the same rules and regulations as military bounty-land warrants.²⁷

Like similar treaties, this clause suggested that those who were offered scrip or allotment were not part of the tribe proper, while those who resided directly with the tribe were. Yet, the Poncas explained it a bit differently: “there are the half-breeds, about 100 in number, who we view to be the same as ourselves, and we want to give each a liberal allowance of land. They have rendered us many favors, and are always doing something to serve us, but we have nothing to pay them;

belonging to Chippewa Indians of Lake Superior, House Committee on Indian Affairs, Ex.Doc. No. 193, 42nd Congress, 2nd Session, 5.

²⁶ Treaty with the Chippewa of the Mississippi (1867), Kappler, 975.

²⁷ Treaty with the Ponca (1858), Article 3, *Ibid.*, 774.

and we therefore want you to do it.”²⁸ The combination of gratitude, kinship, and residence, then, could constitute one’s participation in treaty provisions. But race was not, according to tribal authorities, one of those conditions.

None of this, though, precludes the importance of race for government officials. Even though tribes determined their own membership, indeed, race as a distinguishing factor among groups or individuals was evident even throughout the treaty process. An early form of blood quantum, albeit less strict than the 1934 act would establish, was introduced during the treaty era, confirming that concerns about race were already present in the first half of the nineteenth century, even if underdeveloped. A one-quarter blood quantum was set as the minimum required to participate in the treaty process. Instructions from Harris for the 1838 negotiation of a treaty with the Sioux at Prairie du Chien demonstrate this point:

The first inquiry will therefore be, who are these parties? And, in determining this question, you will have regard to the information you may receive from the agent, the chiefs, and other persons worthy of confidence, who, from their long residence in the country, have had means of forming opinions on the subject. The next step will be to obtain an accurate list of all the relatives of these parties, who have not less than one quarter of Sioux blood. You will receive the applications of all who may deem themselves entitled; and, to satisfy themselves of their right to be admitted, it will be necessary to have recourse to the statements of the chiefs. These should be made publicly, and, if not controverted or disproved, they will be considered conclusive.²⁹

Harris was not alone in his opinion. Debates over the inclusion of mixed-ancestry Natives in treaties were contemplated based on the degree of relationship to tribes, or, in later terms, blood quantum. The same year, General Street noted that, “In the case of the half and quarter breeds, ... it must alone depend, under the treaty, upon one simple fact – whether they were related to the Winnigagoes as near as half and quarter blood? If they were, they were entitled to a share; if not,

²⁸Chief Wa-gah-sah-pi (“The Whip”) to Commissioner, Ponca Delegates in the Indian Office, 5 January 1858. Ratified treaty no. 306, documents relating to the negotiation of the treaty of March 12, 1858, with the Ponca Indians, 34. <http://uwdc.library.wisc.edu/collections> Accessed 24 October 2012.

²⁹ C.A. Harris, War Department, to Office of Indian Affairs, 26 July 1838. Serial Set 349, House Document 229, 28 February 1839, 4.

they ought to be wholly excluded.”³⁰ So, while they distinguished between ‘full bloods’ and ‘mixed bloods,’ this usually did not translate into a difference in legal status.

However they were determined, government officials still often considered mixed-ancestry Natives as separate from other members of the tribe, and their eligibility or entitlement to compensation was limited. Treaties demonstrated, then, that mixed-ancestry Natives were not homogenous and could have varying degrees of connection to the tribe, even though the degree of connection did not always correlate with government’s racial views. They also show that it was tribes who made those decisions about status, based on criteria like kinship and residency. For government officials, though, this status was ambiguous, and in fact would be a source of debate later on during the allotment era when officials were trying to establish the rights of the descendants of the mixed-ancestry Natives included in treaties.

Allotment, Tribal Rolls, and Blood Quantum

Two significant simultaneous shifts took place leading up to the allotment era, both of which would have major implications for mixed-ancestry Natives. First, government officials began raising more serious concerns about mixed-ancestry Natives, their legal status, and their place in the racial order. This happened on both a policy level and on an ideological one. In practice, officials began having to deal with *individuals*, as the changing nature of policy dictated, and thus, with individual identities. But intellectually, developing ideas about hybridity and racial mixing in science were having a trickling down effect, and the scientific debates were paralleled in government debates over policy towards mixed-ancestry Natives. Second, government officials began infringing upon tribal authority over membership, and increasingly inserted their own views in determining which mixed-ancestry Natives should and should not be

³⁰ General Street to Major Hitchcock, 10 December 1838, Congressional Serial Set 349, House Document 229, 59.

included on the tribal rolls. Consequently, treaty-era concerns about race and racial mixing did not appear as part of policy and practice until the allotment era.

Apprehension over mixed-race identity occurred on a few fronts. First was the emergence of an expressly ambiguous discourse about mixed-ancestry Natives. Officials demonstrated an increasing uncertainty as to how to define mixed-ancestry Natives and their place in policy. Second, while ‘mixed bloods’ remained ‘Indians’ for the most part in terms of their legal status, they were separated by virtue of their ‘competency’ – a term that indicated an individual’s ability to manage his or her own affairs. Finally, officials increasingly used blood quantum in attempts to formalize the process of dividing Indians from citizens. Over the five decades that spanned the allotment era, blood quantum would be developed more fully into the strict legal concept it would become in 1934. The legal status of mixed-ancestry Natives would thus be permanently fixed.

The Practice of Allotment

The 1871 Indian Appropriation Act marked an important juncture in how ideas of race could insert themselves into policy decisions. The act stipulated that tribes were no longer viewed as nations. Thus, the capacity tribal authorities had during the treaty era to control their own membership was vastly reduced. According to well-known Native policy historian, Francis Paul Prucha, reformers increasingly rejected internal tribal sovereignty following the Civil War. They insisted that assimilation could not be achieved unless Indians came under US law. As part of achieving that objective, the 1871 law declared that Indians would no longer be recognized as nations, meaning that tribal members would fall under the US laws from which they had

previously been immune.³¹ The 1871 act would do more than that, though. It would have implications for tribal authority over its citizenship, and thus, over mixed-ancestry Natives.³²

These changes would pave the way for the allotment acts which unilaterally imposed the subdivision of land in severalty, with or without tribal consent. It would also initiate the process by which government officials would attempt to usurp tribal authority over membership and especially over mixed-ancestry Natives. The major pieces of legislation which enacted the allotment policy – the Dawes Act of 1887, its extension in 1889 and 1898 to Minnesota and the Five Tribes, respectively, and amendments in 1901, 1906 (the Burke Act), and 1908 (the Curtis Act) – did not indicate any serious contemplation of racial composition in their texts.³³ They were all brief pieces of legislation, at least in comparison to Canada’s Indian Act, and, for the most part, simply authorized the allotment of Indian land. They did not determine the parameters of eligibility. Instead, much like Canada’s scrip policy, eligibility and the meaning of mixed-race that it reflected were worked out in policy and practice.³⁴

Just as Canadian commissioners struggled over who was ‘mixed race’ in the scrip policy, American commissioners struggled with this question in the allotment policy. Commissions were dispatched to create rolls, or membership records, which would determine one’s eligibility for allotment: tribal enrollment meant eligibility. Most individuals were entered on the rolls without dispute or contestation. However, for those who had difficulties proving their ancestry and

³¹ This was supported by an 1885 act which brought Indians under the US criminal code by including them in seven major federal crimes.

³² Prucha, *The Great Father*, 676.

³³ Additional legislation in 1889, known as the Nelson Act [25 Stats., C.24], and 1898, commonly known as the Curtis Act [30 States., C.517], extended the general allotment provisions to Minnesota for the former and the Five Civilized Tribes for the latter.

³⁴ The only Dawes legislation which made explicit mention of mixed-ancestry Natives was the 1891 amendment. This amendment is typically discussed in relation to its more significant section on leasing, previously prohibited for allotments which were intended for agricultural pursuits of their grantees. But more important for the purposes here, and often overlooked, was section five, which stated that children of white fathers and Indian mothers would be considered legitimate heirs. Prucha has interpreted this as an extension of the allotment provisions to heirs, but this is not entirely clear. Little comment and debate accompanied this bill through its stages on the way to legislation, so its intent is perhaps less known. See Prucha, *The Great Father*, 676.

whose membership was contested by either tribal authorities or other members, the process was more complicated. Hearings were called to resolve disputes and disagreements over the commission's determination of the rolls, or to investigate irregularities or problems in the allotment process. It was often the contested position of mixed-bloods in terms of their rights and membership that provided the impetus to such hearings. One of two scenarios presented themselves as sources of contestation: either a mixed-ancestry Native had been excluded by commissioners against his or her wishes; or a mixed-ancestry Native had been included on the rolls contrary to the opinion of tribal authorities. Consequently, a mixed-race discourse was articulated in the process of creating official tribal rolls in order to determine who was eligible for allotment.

Rise of Racial Ambiguity

While the allotment policy would prove to be the central site of mixed-race discourse, ambiguity about mixed-ancestry Natives had been growing apparent in the few years prior to 1887. Increased comments about mixed-ancestry Natives, especially in the BIA's Annual reports, suggested that concerns about racial mixing were on the rise. From the 1880s on, agents, commissioners, and other officials increasingly commented on the presence and status of mixed-ancestry Natives, comments comparatively rare or absent from the record prior to that time. Contrary to the popular belief that US policy makers saw mixed-ancestry Natives as the route to Indian assimilation, many agents actually believed that mixed-ancestry Natives were a negative influence on reserves. Reflecting one of the major nineteenth-century theories on hybridity,³⁵ one

³⁵ I refer to what Robert C. Young calls the 'negative amalgamation' thesis, the theory that "miscegenation produces a mongrel group that makes up a 'raceless chaos,' merely a corruption of the originals, degenerate and degraded, threatening to subvert the vigour and virtue of the pure races with which they come into contact." Young, *Colonial Desire*, 18. Gobineau, Agassiz, and Vogt are especially associated with this theory. See Arthur comte de Gobineau, *The Inequality of Human Races [1853-55]* (G.P. Putnam's Sons, 1915); Louis Agassiz, *The Diversity of Origin of the Human Races : (from the Christian Examiner for July, 1850)*. (Boston: s.n.], 1850); Karl Christoph Vogt,

agent noted that “The half-breeds have all the bad elements of the white man and Indian combined.”³⁶ It was not an uncommon opinion: members of both the government and the public believed in the theory that miscegenation resulted in degeneracy and moral decay. Many agents felt that mixed-ancestry Natives were a detriment to their efforts at assimilation, and that like some whites, unscrupulous mixed-ancestry Natives would take advantage of “the heathen Indian [who] falls an easy victim to their superior cunning in trade and traffic.”³⁷

Other agents were more in line with the equally popularly held notions that mixed-ancestry Natives were a positive force. One agent in Oregon commented that “As those mixed-bloods are nearly all white and have been raised in a civilized manner like whites, they are in one sense a good acquisition, as they show to the full-bloods what can be done with good land, such as there is here, and how easy it is to make a good living entirely independent of everything.”³⁸ Mixed-ancestry Natives were often seen as more progressive, more successful in agriculture, and more able to adopt the customs of civilization – like Christianity and formal education.³⁹ But on this there was no consensus: agents could not agree on mixed-ancestry Natives anymore than could nineteenth-century scientists and anthropologists.

Comments like these were but signals of what was to come. The challenges of sorting out so-called mixed from full bloods that would accompany the allotment policy began with the Chippewa at White Earth – one of the first recipients of the allotment policy. Government officials called in experts to determine blood quantum when it became evident that fraud was

Lectures on Man: His Place in Creation, and in the History of the Earth (London: Longman, Green, Longman, and Roberts, 1864).

³⁶ Report of Sac and Fox Agency, Oklahoma, September 1, 1890, *Annual Report of the Commissioner of Indian Affairs*, 1890, 200.

³⁷ *Annual Report of the Commissioner of Indian Affairs* 1885, 285.

³⁸ Umatilla Agency, Oregon, August 15, 1885. *Annual Report of the Commissioner of Indian Affairs*, 1885, 395.

³⁹ See, for instance, Report of Quapaw Agency, Indian Territory, 25 August 1891, *Annual Report of the Commissioner of Indian Affairs*, 1891, 236; and , Union Agency, Muskogee, Indian Territory, August 1885, *Annual Report of the Commissioner of Indian Affairs*, 1885, 334.

likely taking place.⁴⁰ At White Earth several individuals had received allotments who, according to the tribal authorities, were not Chippewa and not eligible to receive an allotment. A number of fraud cases heard between 1906 and 1915 were meant to determine the legal and racial status of those mixed-ancestry Natives who had received allotments. Experts, including anthropologist Albert Jenks, medical doctor James Woodward, and Smithsonian curator and physical anthropologist Dr. Ales Hrdlicka all served in determining race and racial quantum, either as consultants for the Department of Justice or expert witnesses in the fraud cases.

The central issue of these cases was whether or not allottees were eligible under law to sell their allotments. Under US law, minors and legally-recognized Indians were technically wards of the state and thus prohibited from conducting land sales without departmental approval. On the other hand, individuals of mixed ancestry who had been deemed ‘competent’ by virtue of their ‘white blood’ were considered legally capable and could sell their lands. Therefore, in order to determine if allotment lands were sold legally, the racial status of the original allottees had to first be confirmed. Extensive genealogical research, undertaken by both the attorney general’s office and the defendants’ attorneys attempted to simplify the ambiguity of identity by designating a 50% blood quantum as the dividing line between ‘full blood’ and mixed blood,’ or ‘competent’ and ‘ward. Test cases were sent to the court to determine descent rules, but the district court came back with a different conclusion: mixed-blood Indians would be deemed competent at a minimum quantum of one-eighth white blood. A series of appeals took the cases

⁴⁰ See for instance, Katherine Ellinghaus, “The Benefits of Being Indian: Blood Quanta, Inter-marriage, and Allotment Policy on the White Earth Reservation, 1889-1920,” *Frontiers: A Journal of Women Studies* 29, no. 2/3 (June 2008): 81–105; Melissa L. Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation, 1889-1920* (Lincoln: University of Nebraska Press, 1994); David L. Beaulieu, “Curly Hair and Big Feet: Physical Anthropology and the Implementation of Land Allotment on the White Earth Chippewa Reservation,” *American Indian Quarterly* 8, no. 4 (Autumn 1984): 281–314.

to the US Supreme Court, where the final ruling stated that any Indian not 100% Indian blood was legally a mixed-blood.⁴¹

Jenks, Hrdlicka and Woodward were brought in to help make such determinations following the court rulings, but their testimonies seemed to further complicate matters. While each claimed to be able to conduct examinations and conclude an individual's quantum based on physical features such as hair, nails, and gums, the difficulty, and even impossibility, of determining blood status was apparent. If the process itself did not reflect ambiguity about mixed race, then the actual assessments certainly did. Dr. Woodward commented about one particular individual under consideration: "I should say she was a full blood. Those people are so mixed up that you cannot tell. But from her dark complexion I should judge she was a full blood Indian, although she may have been slightly mixed."⁴² While it would seem that it was the good doctor who was "mixed up," others shared his confusion. Under cross-examination, Jenks admitted he would not be sure of one's status without having knowledge and seeing in person members of their family. Indeed, certainty of one's blood quantum upon visual examination seems absurd today; but in the early twentieth century, anthropometric evidence would be the deciding factor in many of these cases.

Such assessments did not go unchallenged by the Chippewa themselves and suggest opposing views about the identities of mixed-ancestry Natives. As David L. Beaulieu notes in his study of these claims,

The Chippewa classified a person Indian if he lived with them and adopted their habits and mode of life and classified him a half-breed if he adopted the white man's life. Some Chippewas in using this general rule tended to focus on style of dress as the main feature in distinguishing Indian and mixed-blood. Indians wore breachcloths [*sic*] and

⁴¹ Beaulieu, "Curly Hair and Big Feet."

⁴² James S. Woodward, Medical Doctor at White Earth, Testimony in Relation to Affairs at the White Earth Indian Reservation, Minnesota, March 8, 1887. Senate Committee on Indian Affairs, 49th Congress, 2nd session, Washington, D.C., 113.

had braids in their hair whereas mixed-bloods wore hats and pants. Some noted economic style in trapping; when Indians trapped they only trapped enough to pay off exactly what was due the trader whereas mixed-bloods trapped the entire season in an effort to gain a surplus. To others this general rule was more precisely determined by the nature of intermarriage whereby children of Indian and white parents and children of persons who were both mixed-blood were defined as mixed-blood. Children of mixed-bloods and Indians were considered Indians or “Anishinabe” or of “our people.”⁴³

The testimonies indicate the confusion that might have resulted between officials and the Chippewa over different uses of terms like ‘half-breed’ or ‘mixed-blood.’ To each, they represented something quite different. While the Chippewa could consider an individual of mixed-descent a full-fledged member of the tribe and ‘Indian’ in the same sense as any full-blood, government officials took a different meaning. Debates like these represented the different views Indigenous peoples and government officials had about cultural identity and the role that biology played.

White Earth was in some ways precedent-setting. It was the first application of allotment, and the first commission to create rolls. It also remains one of the most poignant examples of the expression of the racial ambiguity that emerged out of late nineteenth-century scientific debates. But while White Earth has been well examined in the literature, it has not been examined as part of a longer continuum that constitutes a mixed-race discourse in Aboriginal policy. Blood quantum was used here, not just as a means of dispossession, as many have argued. It reflected the ambiguity of race and the ambivalence government officials felt towards such a category.

The allotment experience of the Osage also makes up part of this continuum. Challenges over the rolls there began in 1896. Under specific scrutiny were the 37 individuals to whom, on three separate occasions, the Osage council refused membership. Government officials had repeatedly submitted these names for consideration, but the Osage remained firm: in line with

⁴³ Beaulieu, “Curly Hair and Big Feet,” 288. Beaulieu takes his evidence from the testimonies given during the US District Court fraud cases.

the reasons Kohpay gave in 1910, these people were not Osage members, no matter what their documentary evidence claimed. As the council reported in 1908, during its second assessment of this group's eligibility, "The Osages always have required affiliation of persons claiming to be Osages and who want to share their property. The Osage constitution and laws are modeled after those of the Cherokees... Their laws, usages, and customs are against enrolment of the applicants who claim some small portion of Osage blood, but who were born either among whites and are white citizens or were born among other tribes and have never lived with the Osages."⁴⁴ Indeed, there were problems, and they were not limited only to confusion over the status of mixed-ancestry Natives. Non-Natives, either those who had an affiliation with the tribe or those who did not, also made claims on Osage property in order to receive allotments, often fraudulently. Some people on the rolls were whites put there for charity or debt owed; they were not considered full or permanent members, and now their relatives were coming to claim an allotment. The Osage council was quite angry, since their own children born after 1906 could not claim an allotment.⁴⁵ Also of issue were individuals of mixed Osage-Kaw ancestry, some of whom had received allotments among the Kaw. The Osage council objected to all claims made by any individual, related or not, who was not a practicing member of the tribe. Tribal membership rules certainly added to the complexity of ascertaining a mixed-ancestry Native discourse that was already convoluted in common-sense silence and ambiguity, but it does not take away from the fact that at the heart of the difficulty experienced in allotment was racial ambiguity.

The debates that arose during the Dawes Commission hearings offered yet another example of racial ambiguity. In many ways, policies and laws for the Five Tribes often differed

⁴⁴ Osage Committee on General Resolutions 1910 Osage Enrollment Hearings, House Subcommittee of the Committee of Indian Affairs, 61 Congress, 2nd session on HR 17819 and HR 21199, 21 November 1908, Washington DC, 45.

⁴⁵ 1906 Osage Allotment Act.

from those applied to other tribes, and for two reasons. First, the Five Tribes were treated differently than many other tribes because officials viewed them as more ‘civilized’. Second, the presence and integration of blacks among those tribes meant race, hierarchy, and mixing had different results and connotations.⁴⁶ However, issues about racial ambiguity similar to those officials dealt with at White Earth and in Oklahoma were experienced with the Five Tribes. As historian Gary Zellar explains about the Creek,

The principal effect of the Dawes Commission taking control of citizenship and identity questions, then was not to enrol more Creek freed people than was justified but to eliminate the luxury of racial ambiguity. The systematic recording and cataloguing of people’s identity and descent according to standards demanded by the dominant white society quantified racial abstractions with an air of finality that was in sharp contrast with the lackadaisical, informal, and at times corrupt methods employed by the Creeks themselves, as the Dawes Commission judged Creek citizenship practices. And while the kinship-based social structure of the Creek society had undergone severe disruptions attended by removal, the alarming mortality and dislocations of the Civil War, and the onslaught of intruders in the postwar years, kinship relations were still the governing principle that governed legitimate citizenship for the Creeks.⁴⁷

Indeed, the elimination of this racial ambiguity would become the hallmark of Aboriginal policy all across the colonial world in the late nineteenth and early twentieth centuries.

The confusion produced by such racial ambiguity was evident in the official records, too. In 1895, during a Congressional debate over an amendment to the Indian Appropriation bill, congressman Dennis Flynn proposed that those among the Five Tribes should not be considered ‘Indian’ if they had more than half white blood. The amendment proposed that, “any member in whom the white blood predominates of any Indian tribe or nation in the Indian Territory, or in the Territory of Oklahoma, shall be taken and considered a white person, and as such be entitled to and invested with all the privileges and franchises of a citizen of the United States and

⁴⁶ See for instance, Gary Zellar, *African Creeks: Estelveste and the Creek Nation* (Norman: University of Oklahoma Press, 2007); Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008); Perdue, “Mixed Blood” Indians.

⁴⁷ Zellar, *African Creeks*, 219.

henceforth be ineligible to vote or hold any office of honor, trust, or profit in any tribe or nation.”⁴⁸ Yet, when describing the ‘problems’ of how those tribes were constituted, he opined that no full bloods existed at all:

They talk about the five Civilized Tribes as if they were just as they always had been. I tell you that a full-blood Indian in the Five Civilized Tribes is about as much a curiosity as he would be in the city of Washington. These men who are charged with controlling and monopolizing the affairs of the tribal government are not Indians. Nine out of ten of them are men who were not born in the Indian Territory. Some of them were born in France; some of them were educated in Canada; others either in Arkansas or some of the adjoining States.⁴⁹

The lack of logic was apparent: if all members of the Five Tribes were mixed-ancestry Natives, then there would be little need to distinguish between full and mixed bloods with a blood quantum rule. The debate did not end there – nor did the ambiguity. The following month, James Kyle, a member from South Dakota, suggested a further amendment that would create a definition to reflect tribal notions of mixed-ancestry Native identity. In essence, he claimed, those of any blood quantum who “lived and maintained tribal relations with and were recognized members of any tribe of Indians” should be legally considered Indians.⁵⁰ This tension between the impetus to apply biological racial categories and to concede to the tradition of recognizing tribal authority over membership would remain a hallmark of the allotment policy. In this case, it would appear that Kyle recognized the reality of mixing, particularly as a result of the fur trade, and how tribes incorporated outsiders in this manner.⁵¹

While Kyle’s acknowledgement of cultural realities might have been rare, Flynn’s ambiguity was not. Particularly in the south among the Five Tribes, it is evident (and widely

⁴⁸ Mr. Dennis T. Flynn, Delegate from Oklahoma, Congressional Record – House Proceedings, 16 January 1895, 53rd Congress, 3rd Session, 1040.

⁴⁹ Ibid.

⁵⁰ Mr. James H. Kyle, Congressional Record, Senate Proceedings, 23 February 1895, 53rd Congress, 3rd Session, 2610.

⁵¹ Ibid.

acknowledged in the literature) that officials' views were shaped by public demands for more land. But they were also shaped by growing states' needs for tax revenue. Lengthy debates in Congress over this matter confirmed that officials were concerned with not only freeing up land for agricultural settlement but also turning inalienable, allotted Indian lands into taxable bases for their states.⁵² These pragmatic demands became entangled with intellectual discourses on mixed-race, and soon became a justification for lifting restrictions on allotted lands for mixed-ancestry Natives. Increasingly, allotments held by mixed-ancestry Natives were exempt from restrictions that impeded taxation. Undoubtedly, the obligation of governments to respond to these public demands swayed the shaping of policy in regard to the status of the privatization of tribal lands. But these pragmatic concerns should not take away from the presence of ideological ones: racial thinking provided the epistemological framework for what was economically preferable.⁵³

The only consistency demonstrated in these three cases was the confusion experienced by officials over the question of mixed-ancestry Natives. Officials grappled with the discrepancies between their ideas about race as biology and tribal practices of membership based in kinship and residency. They also struggled with the internal contradictions of racial classification. The rise of racial ambiguity in the post-1887 era certainly brought with it its fair share of discord, complaint, and chaos. By the 1890s, government officials were fully aware of the problems created by this tension. In 1896, a Senate report considered the rights of mixed-blood Indians in an attempt to bring some order to the chaos. After reviewing the history, the Senate committee

⁵² Mr. McGuire, from the Committee on Indian Affairs, Report on the Removal of Restrictions from part of Lands of Allottees of Five Civilized Tribes, House of representatives Report no. 1454, House Committee on Indian Affairs, 60th Congress, 1st Session, 6 April 1908.

⁵³ This was a common pattern as unorganized lands became counties with taxation powers. See Richmond L. Clow, "Taxing the Omaha and Winnebago Trust Lands, 1910-1971: An Infringement of the Tax-Immune Status of Indian Country," *American Indian Culture and Research Journal* 9, no. 4 (1985): 1-22.

aply (if not somewhat belatedly) concluded that there was a need to create consistency in policy where mixed-ancestry Natives stood. It noted that:

The term “Indian” does not seem at all times to have been accurately defined in our legislative history, and it is thought advisable to give it a precise meaning as applied to the holding and allotment of public lands; and therefore it is provided in section 1 of the bill that where the word “Indian” occurs in any law or treaty of the United States with any nation or tribe of Indians, “Indian” shall be held to mean and include not only Indians of the full blood, but also Indians of the mixed blood of whatever degree, whenever such mixed-blood Indian, at the time of passage of any such law or the ratification of any such treaty, lived with and was a member of the tribe and maintained tribal relations with his tribe who were interested in or affected by any such law or treaty.

It will be observed, therefore, that the test is whether such Indian possessed Indian blood of any degree at the time of the passage of the law or treaty by which he may be affected and actually lived with and was recognized as a member of the tribe by his people and maintained tribal relations with them.⁵⁴

Obviously, as witnessed by the experiences of the Osage and others, this was not an observed conclusion. There were many cases where individuals who had not lived with the tribe, and who were not recognized members of the tribe were included on tribal rolls by commissioners. Nonetheless, officials continued to cite tribal membership and community acceptance as the litmus test for legal Native American identity, but then promptly usurped tribal authority by imposing their ideas of race on tribal communities.⁵⁵

As these tensions between stated and practiced policy suggested, there was undoubtedly ambiguity about the definition of mixed blood. There also continued to be debate over whether or not federally recognized tribal membership was dependent upon residency and acceptance by

⁵⁴ Rights of Mixed-blood Indians, 18 May 1896, Senate Report No. 969, Senate Committee on Indian Affairs, 54th Congress, 1st Session.

⁵⁵ For instance, a 1909 joint resolution for enrollment noted that: “It is the general and commonly accepted theory that any person of Indian blood belongs to the tribe of the same blood and his rights to share in the tribal benefits are established when he is properly recognized by the Department of the Interior. The question as to the quantum of Indian blood heretofore, so far as the policy of the Government is concerned, has had nothing to do with the right of enrolment with a tribe.” Brief of Petitioners, Joint Resolution for the Enrollment of Certain Persons as Members of the Osage Tribe of Indians, and for Other Purposes, Senate Committee on Indian Affairs, 60th Congress, 1st Session, 26 January 1909, 137.

the tribe, or if blood quantum – the one-quarter quantum that others saw as ‘standard’ – would factor into the definition. Native Americans did not easily accept this shift and objected to decisions made by commissioners that undermined their own authority and their own rules of membership. An agent in Minnesota, for instance, noted how the Chippewa were opposed to the government’s use (or rather, misuse) of the term ‘mixed blood’: “I find there is quite a feeling of dissatisfaction among the full-bloods in regard to the distribution of funds as at present made, as they think the term “mixed bloods” is too general and far reaching, and thus takes in a good many whom they believe are not entitled to receive payments and are kept on the rolls through political influences.”⁵⁶ This terminology did not correspond with tribal understandings of it. Other officials were aware of this discord. For instance, an agent in Union Agency in Indian Territory noted that instructions to the Dawes Commission given in 1896 did not correspond to this practice:

The Dawes Commission was given a jurisdiction to examine into citizenship claims only so far as was necessary to determine whether a person making application was in fact and law a citizen of the nation; that the commission had no power to admit a person of Indian blood to citizenship in a tribe merely because he was descended from a person previously a member of that tribe; but that before enrolling such applicant something more than the fact that he was of the blood of the tribe to which he claimed a right to membership was necessary to be established, namely, that he was in fact and law an actual member of that tribe.⁵⁷

The continuing albeit contradictory persistence of respecting a tradition of acknowledging tribal authority over membership created a tension among officials who strived for but never achieved consensus about mixed-ancestry Natives.

⁵⁶ “Reports Concerning Indians in Minnesota,” George L Evans, Special Disbursing Agent, to Commissioner, 28 August 1899, *Annual Report of the Commissioner of Indian Affairs*, 1899, 208.

⁵⁷ Report of Agencies in Indian Territory and Report of Agent for Union Agency, 10 August 1899. *Annual Report of the Commissioner of Indian Affairs*, 1899, 121.

Gender and Descent

In addition to the many above questions raised about the meaning and definition of mixed-ancestry Natives, gender also played into the debate. More specifically, it was unclear to officials in cases where mixed-ancestry Natives had one white and one Native parent, how descent should be determined. It was not clear if such individuals should follow the American tradition (based in British common law) of patrilineal descent, or if they should follow matrilineal descent – far more common among Aboriginal cultures.

In good government fashion, there had never really been uniformity on this matter. An 1847 ruling, *US v. Sanders*, held that blood quantum would not determine the status of mixed-ancestry Natives, and that the mother's status would be followed.⁵⁸ However, the 1848 ruling in *Reynolds* held that the status should follow the father's, in the common law tradition.⁵⁹ The context is particularly significant in this case: its main goal was not the determination of the legal status of mixed-ancestry Natives, but rather, the legal status of a white man married to a mixed-ancestry Choctaw woman whose paternal grandfather was white. Reynolds had committed a murder, and the ruling determined whether or not he would be held accountable to US laws, since previous case law held that US courts had no jurisdiction over Indians who were not enfranchised US citizens. It was not attempting to set a standard for the identity of mixed-ancestry Natives, thus its applicability to all mixed-ancestry Natives for purposes other than criminal matters should not be assumed.

Nonetheless, the decision remained important to the consideration of mixed-ancestry Natives in Aboriginal policy. In his 1890 report, the Secretary of the Interior indicated that he was not in agreement with the Reynolds decision. He noted:

⁵⁸ Cited in *ex parte Reynolds*. *Ex parte Reynolds*, 5 Dill., 483 (1879), Cases determined in the United States Circuit, Volume 5 By United States. Circuit Court (8th Circuit), John Forrest Dillon p. 403.

⁵⁹ *Ibid.*

There is no doubt that there is a stage at which, by the admixture of white blood and non-affiliation with the Indian tribes, persons would be debarred from participating in tribal benefits. The admixture of blood, however, must be considered in connection with all the circumstances of each case; consequently a fixed rule equally applicable to all cases can not well be adopted. Every application for tribal rights by mixed bloods should, as a matter of justice to the Indians, be closely scrutinized.⁶⁰

This opinion was supported in 1892 by the Indian Commissioner's acknowledgment that the law of descent be construed "in accordance with Indian usage and our American administrative sanction."⁶¹ In essence, the rule of paternal descent could not be strictly applied – if at all – to Indians. Instead, their own customs should prevail. Indeed, the differences between the two views were most evident when it came to cases of determining the status of mixed-ancestry Natives.

Allotment agreements reflected the Secretary's interpretation of descent rules. An 1892 agreement with the Yankton Sioux stated that allotment was available to all members of the tribe, "including mixed-bloods, whether their white blood comes from the paternal or maternal side."⁶² Ten years later, the Rosebud Sioux agreement read almost verbatim.⁶³ However, officials were not well-informed on this issue. In fact, some officials were entirely unaware of the debate and its history. One member of a joint committee on enrolment in 1909 commented that, "Where no statutory provision exists fixing the membership of the tribe, children of white fathers and Indian mothers and of Indian fathers and white mothers have alike received recognition in the various tribes, and a person having Indian blood is regarded generally as an Indian whether

⁶⁰ *Annual Report of Commissioner of Indian Affairs*, 1890, 75.

⁶¹ Letter from T.J. Morgan, Commissioner, to Secretary of the Commissioner, 16 March 1892, Correspondence on Sioux mixed bloods, Senate Committee on Indian Affairs, Senate. Ex.Doc. No. 59. 53rd Congress, 2nd Session, 10 March 1894, 19.

⁶² Agreement with the Yankton Sioux or Dakota Indians in South Dakota (1892), Kappler, *Indian Affairs: Laws and Treaties.*, 526.

⁶³ To Ratify Agreement with Rosebud, Senate Report No. 662, p.5. 57th Congress, 1st Session, 7 March 1902, (As did other agreements, including the 1895 Agreement with the Indians of the Blackfeet Indian Reservation in Montana, *Ibid.*, 604; and 1895 Agreement with the Indians of the Fort Belknap Indian Reservation in Montana, *Ibid.*, 603).

enrolled with a tribe or not.”⁶⁴ Quite contrary to the original Reynold’s decision, later cases upheld tribal traditions. For instance, a Nebraska court case ruled that “a person of white and Indian parentage is deemed to be a mixed blood, without regard to the sources of the Indian blood...therefore, no distinction can be drawn between those who derive the Indian blood from the mother and those who derive it from the father.”⁶⁵ This case itself was following a Supreme Court decision which ruled that treaties should be construed “in the sense in which they would naturally be understood by the Indians.”⁶⁶ This policy, then, was an acknowledgment of Native American descent rules, in keeping with the US’s tradition of acknowledging tribal authority over membership – and a contradiction to rising racial concerns.

The case of Mrs. Jane Waldron of the Sioux reservation serves as an apt point in case of the confusion and ambiguity surrounding descent rules, mixed race status and the law. Jane Waldron, who identified herself as an Indian, had, according to BIA records, one-quarter blood quantum. Waldron claimed to have been born upon the rolls at the Cheyenne River Agency and had received rations at that agency. Other than the few years where she had drawn rations, she had lived among the whites. Tomahawk, who belonged to and resided with the tribe, claimed she was not a legitimate member. Using the justification that children follow the status of the father, a commission ruled that she was a non-Indian citizen, a decision in keeping with the Reynolds ruling but contrary to the apparent practice of the BIA. The reasons for the ruling were also contrary to the membership criteria of the tribe: the father’s status would not have alone determined her status.⁶⁷

⁶⁴ Brief of Petitioners, Senate. Committee on Indian Affairs. Hearings before the Joint Resolution for the Enrollment of Certain Persons as Members of the Osage Tribe of Indians, 26 January 1909, 137.

⁶⁵ 118 Federal Reporter, *Sloan v. United States*, Circuit Court, District of Nebraska, 288.

⁶⁶ Brief of Petitioners, Senate. Committee on Indian Affairs. Hearings before the Joint Resolution for the Enrollment of Certain Persons as Members of the Osage Tribe of Indians, 26 January 1909, 137.

⁶⁷ Assistant Attorney-General to Secretary of the Interior, 27 November 1891. Senate. Ex.Doc. No. 59. 53rd Congress, 2nd Session.

The Waldron case made its way to the courts. In the 1891 case, *Black Tomahawk v. Waldron*, the judge ruled in line with the Reynolds decision: “the common-law rule that the offspring of free persons follows the condition of the father prevails in determining the status of children born of a white man, a citizen of the United States, and an Indian woman, his wife. Children of such parents are, therefore, by birth not Indians, but citizens of the United States, and consequently not entitled to allotments under the act of March 2, 1889.”⁶⁸ As the committee noted, the impact of this ruling varied. It was meant to apply specifically to allotments made under the 1889 act (the Chippewa at White Earth), but was eventually applied to all allotments made under the 1887 act.⁶⁹ In reality, though, even this policy would prove a failure: there would be no uniform application of any court case ruling.⁷⁰

Competency

Clearly, the problem of racial ambiguity would not be resolved by the courts, but policy officials did not abandon their efforts to eliminate it. The next attempt to find a means of separating mixed ancestry Natives into existing racial categories came with the introduction of ‘competency’: a legal status conferred upon Indians who were deemed capable of managing their own affairs. By law, Native American status was comparable to that of a state ward, meaning that they lacked the basic rights over their property. Competency, like enfranchisement in Canada or, as discussed later, exemption in Australia, granted the full rights of citizenship. ‘Competent’ Indians would immediately be granted title to their allotment, while those deemed ‘incompetent’ would have to wait a 25-year trial period. The policy reflected underlying beliefs in racial stratification, the role and meaning of nineteenth-century notions of ‘civilized,’ and the

⁶⁸ *Black Tomahawk v. Waldron*, 13 L.D., Allotment of Lands in Severalty to Indians, House Document no. 576. 59th Congress, 2nd Session, 26 January 1907, 683.

⁶⁹ Act of 2 March 1889. 25 Stat L. 888.

⁷⁰ Senate. Ex.Doc. No. 59. 53rd Congress, 2nd Session.

unspoken, assumed notions about the place of Aboriginal people in that order. Competency, like racial inequality, was seen in the realm of ‘nature. Dominant beliefs held that it was the natural order of things that whites would overpower the so-called inferior races. Thus, it was seen as natural for a ‘real’ or traditional Indian (understood to mean ‘uncivilized’) to be deemed incompetent, while one more civilized (usually taken to mean a low Indian blood quantum) was, ‘naturally,’ more likely to be deemed competent. In fact, the notion of competency was an integral aspect of the idea of race in the US – a point aptly argued by Beaulieu regarding allotment fraud and defining mixed blood in White earth Chippewa groups.⁷¹

Officially, competency commissions did not start until 1913 under Frank Knight Lane, Secretary of the Interior. He established this commission to determine which Indians were competent – a status which he measured by literacy and economic self-sufficiency – to manage their own affairs and be released from government care.⁷² In practice, this decision was usually made on the recommendation of the Indian agent, but the effect was the same.⁷³ Competency was a fast-track to assimilation: the 1906 Burke Act made the 25-year probation period established by the 1887 Dawes Act more flexible, allowing the Secretary to remove restrictions on the land before that time had lapsed. An allottee could accordingly have that period reduced if he or she were deemed “competent and capable of managing his or her own affairs.”⁷⁴ However,

⁷¹ Beaulieu, “Curly Hair and Big Feet.”

⁷² Janet McDonnell, “Competency Commissions and Indian Land Policy, 1913-1920,” *South Dakota History* 11, no. 1 (Winter 1980): 23. In practice, competency did not have as clear a standard, and there was no consensus about what factors should be considered. For instance, officials debated the validity of using education as a deciding factor in *Classification of the Chippewa Indians of Minnesota*, House Committee on Indian Affairs, 70th Congress, 1st session, 21 March 1928.

⁷³ Senate Document 445, *Hearings on Bills relating to Crow Reservation* 1 April 1908, 60th Congress, 1st session.

⁷⁴ 1906 Burke Act, 8 May 1906. [H. R. 11946.] | [Public, No. 149.] 34 Stat., 182.

there was no consistent or efficient manner in which competency might be applied for and determined.⁷⁵ Lane's design changed that.

Unofficially, competency as a determinant of allotment eligibility was already in place by 1913. Since the 1890s, commissions and hearings debated competency as they debated the value of blood quantum in determining allotment eligibility, US citizenship, and tribal membership. In 1910, a competency commission had been established on the Omaha reservation in Nebraska.⁷⁶ As would become increasingly evident, there were clear overlaps between competency and blood quantum. The likelihood of being deemed competent increased with the perceived amount of white blood, though this number varied regionally – half in the south-east and one-quarter in the Midwest. Either way, a lower Indian blood quantum was, for most officials, reason enough to be considered competent. As a House of Representatives Report noted in 1896, “Indians having only one-quarter of Indian blood ought to be able to assume the responsibility of citizenship and bear some of its burdens equally with their white neighbours.”⁷⁷ This matter did not go uncontested and was the subject of serious debate. Commissioner D.M Browning wrote in the same year about his objections to the removal of restrictions on title for mixed-ancestry Native allotments. He believed that “there are many others, mixed bloods as well as full bloods, to whom the issuance of such patents would be extremely unwise, and who would receive no permanent benefit from the land thus allotted them.”⁷⁸ He accordingly recommended keeping the 25-year probation in place where the US government would retain title.⁷⁹ Browning's was the

⁷⁵ Janet McDonnell, “Competency Commissions and Indian Land Policy, 1913-1920,” *South Dakota History* 11, no. 1 (Winter 1980): 21–34.

⁷⁶ Clow, “Taxing the Omaha and Winnebago Trust Lands, 1910-1971.”

⁷⁷ Confirming title of mixed-blood Indians to lands. Committee of the Whole House. House; Committee on Indian Affairs. House. House Report No. 2276, 54th Congress, 1st session, 6 June 1896.

⁷⁸ Commissioner D. M. Browning to Secretary of Interior, Confirming title of mixed-blood Indians to lands. Committee of the Whole House. House; Committee on Indian Affairs. House. House Report No. 2276, 54th Congress, 1st session, 6 June 1896.

⁷⁹ *Ibid.*.

minority opinion, though. Allen's comments more closely reflected the majority view among government officials: those allottees with one-quarter blood quantum should receive land patents, granting them full and clear ownership. He explained:

This provision is important to the Indians as well as to the white settlers in the States and Territories where Indian lands are located. It is believed by your committee that a mixed blood Indian having one-quarter or less Indian blood in his veins is quite as competent to perform the duties of citizenship intelligently as many white men, and that the percentage of incompetency among the Indian tribes of one-quarter Indian blood or less is not greater than that to be found among a like number of white persons. It is therefore believed to be unjust both to the Indian and taxpayers where these lands are found that the Indians should be deprived of the right to alienate their lands and be exempt from just local taxation.⁸⁰

Pragmatic concerns, such as taxation, were often intermingled with ideological considerations when it came to determining racial status. Separating the two was impossible. In any case, the notion of competency played an important role in that determination.

Browning's objections clearly had little impact, while Lane's vision of competency would receive widespread support. In 1916, only a few years after the introduction of Lane's policy, the Senate recommended the removal of restrictions on mixed-blood Quapaw in Oklahoma. The legislation proposed to "remove restrictions from any part or all of the allotted lands of adult allottees, particularly the mixed bloods, of any of the tribes, including the Modocs, belonging to the Quapaw Agency in the State of Oklahoma, whenever he shall be satisfied that any allottee is competent to manage his or her own affairs."⁸¹ Increasingly, allotment was providing a means of eliminating racial ambiguity, and indeed, taking on the characteristics of elimination through legislation, like scrip in Canada.

⁸⁰ Mr. Allen, from the Committee on Indian Affairs, Senate Report No. 969, to accompany S. 3051 [no title], 18 May 1896, 54th Congress, 1st Session. A similar sentiment is repeated in Mr Gamble, Confirming title of mixed-blood Indians to lands. Committee of the Whole House. House; Committee on Indian Affairs. House. House Report No. 2276, 54th Congress, 1st session, 6 June 1896. It appears again in Senate Report No. 6, 55th Congress, 1st Session, Mr Pettigrew, from the Committee on Indian Affairs, "Mixed-blood Indians".

⁸¹ Removal of Restrictions, Quapaw, 1916. Senate Report No. 193. 64th Congress, 1st Session.

By the following year, the use of blood quantum to determine competency was accelerated. A new policy declared that all Indians of half or less blood quantum would be deemed competent and receive patents to their land.⁸² The department would now take a more liberal ruling on these matters – that is, they would be more inclined to find the individual competent. Indeed, if there had been any previous ambiguity about the competency of mixed-ancestry Natives, at least in the eyes of the law, it was confirmed with this announcement. Indian Commissioner Cato Sells corroborated this interpretation in his annual report:

While ethnologically a preponderance of white blood has not heretofore been a criterion of competency, even now is it always a safe standard, it is almost an axiom that an Indian who has a larger proportion of white blood than Indian partakes more of the characteristics of the former than of the latter. In thought and action, so far as the business world is concerned, he approximates more closely to the white blood ancestry.⁸³

While Sells probably did not have the consensus of opinion he believed, his words demonstrated an emerging pattern in policy: it was increasingly more acceptable to deem mixed-ancestry Natives competent by sheer virtue of their ‘white blood. The racial ambiguity that had plagued officials throughout the allotment era was, then, disappearing.

Blood Quantum

What this all amounted to was the application of blood quantum as a criterion for Indian-ness. Indeed, as the competency requirements increasingly demonstrated, blood quantum was fast becoming the standard of dividing mixed-ancestry Natives into one of two racial categories – that racial binary that had become one of the hallmarks of colonialism. Although it would not be made an enforceable legal concept until 1934, it was already articulated and defined during the

⁸² Prucha, *Documents of United States Indian Policy*, 3rd ed. (Lincoln: University of Nebraska Press, 2000), 213.

⁸³ *Annual Report of Indian Affairs*, 1917.

allotment era.⁸⁴ True, there was no uniform definition of ‘Indian’ that used a blood quantum criterion prior to 1934; but it was still a practiced concept during the allotment era. It was, more specifically, through the development of the concept of ‘competency’ that blood quantum became a useful tool for officials to distinguish between ‘Indians’ and ‘white citizens.’

Allotment Conclusion

Those mixed bloods who were descendants of treaty signatories were considered part of the tribe. Sioux chief Red Cloud made this point in response to Senator Pettigrew’s question if mixed-bloods should be entered on the rolls and share in tribal property:

Here is the difference we notice: those half-breed children of Indian women who lived with us in old days in wild life are considered Indians, and the husbands of those women were considered adopted Indians, and they signed the treaties. The children of those half-breeds who signed the treaties are considered Indians. That is the difference I want to make. But those mixed bloods who have come in later and never signed any treaty we think should be excluded from the tribe.⁸⁵

In the end, it mattered little. Allotment was forced upon all tribal members, irrespective of their blood quantum, thus ending their status as Indians and indeed, the tribal entity itself.

The allotment era, then, represented a major shift in thinking about mixed-ancestry Natives. The specific characteristics of this era – competency, the rise of blood quantum as a legal status associated with citizenship, and the forced acknowledgement of an increasing mixed ancestry population – placed administrators into a new position: they had to define ‘mixed blood’

⁸⁴ Spruhan argues that “the lack of consistency in applications of blood quantum reflects the failure of the United States to reconcile the foundational contradictions of federal Indian law.” He argues that this lack of consistency was caused by “the lack of any clear guidance by Congress... Congress did not attempt to define Indian status until the late nineteenth century, and then did so primarily in the context of the distribution of Indian property and the allotment of Indian lands. Without statutory definitions, courts and executive branch officials applied varying rules to specific situations, utilizing the language of blood, but not necessarily applying blood quantum to divide Indian from non-Indian or tribal member from non-member.” While Spruhan is correct in his argument, it is perhaps too narrow a legal focus for my purposes here. While blood quantum was not officially the primary criterion for establishing legal identity, it was unofficially, but effectively, evoked in the pre-Reorganization period. Treaty commissioners, for instance, might limit eligibility by blood quantum (usually one-quarter), and this very clearly became a bench mark during the allotment era. Spruhan, “Legal History of Blood Quantum in Federal Indian Law to 1935.”

⁸⁵ Red Cloud to Senator Pettigrew, Statements of a delegation of Oglalla Sioux, Senate Committee on Indian Affairs, 55th Congress, 1st session, 4 May 1897, 15.

and their place in Aboriginal policy and in the larger American society. As the Secretary of the Interior noted in his 1890 report,

When Indian reservations were remote from white settlements and practically valueless for the purposes of those engaged in civilized pursuits, questions concerning the rights of persons of mixed blood to tribal benefits were rarely presented, and were deemed of little moment. But since the steady march of civilization has brought the red man into close contact with the dominant race, and the real value of tribal lands has consequently increased, and since the Government has inaugurated the system of allotment to Indians of lands in severalty, many persons claiming to be mixed bloods have urged this bureau to enrol them as members of Indian tribes. The subject has thus become one of decided importance, each application requiring careful investigation and consideration.⁸⁶

While that ‘steady march of civilization’ had resulted in increasing clashes over land, it also brought the ‘mixed-race problem’ to the forefront. Land rights could not be determined without the clarification of status, and status was in part determined through racial ascription. The ambiguity officials and even the public felt toward mixed-ancestry Natives would need to be resolved if the policy was to move forward, and if those rights were to be definitively determined. It was in this context that the discourse of mixed race was created.

So, until 1887, the lack of a definition for legal purposes remained a non-issue because the US government had made a practice of treating with *tribes*, not individuals, and observing the tribal right to determine membership. Officials, then, rarely had to deal with problems associated with eligibility themselves. Consequently, until the Dawes Act, the racialization of legal identity for mixed-ancestry Natives remained obscured by the formal and official ‘nation-to-nation’ relationship between the federal government and tribes. This process was already underway in Canada and, as we will see in the next chapter, Australia; but not in the US. It was not initiated until the Dawes Act in 1887 compelled officials to define ‘Indian’ on an individual level and according to race, despite this long history of ‘nation-to-nation’ relations.

⁸⁶ *Annual Report of Indian Affairs*, 1890, LXXIII.

By the beginning of the twentieth century, debates produced by the allotment policy over mixed race had resulted in a clearer definition of both Indian and mixed blood than had been previously witnessed. Indeed, it was only through decades of contemplation, contradictory (and often unapplied) court rulings, and ambiguous legal definitions that any discernible definition, of either ‘Indian’ or ‘mixed blood’ could be extrapolated. Charles Kappler’s 1913 work provides some insight, where he developed definitions based on years of legislation, practice, and case law:

I. Definition: "Indians" is the name given by the European discoverers of America to its Aboriginal inhabitants. The term "indian", when used in a statute without any other limitation, should be held to include members of the aboriginal race, whether now sustaining tribal relations or otherwise." II. Status and Disabilities. "A. Who are Indians - 1. By birth - (a) Half-breeds., - The question of the status of half-breeds which usually arises in the case of the offspring of a white father and an Indian mother has been the subject of conflicting decisions. The weight of authority is, adopting the common-law rule, that the child follows the condition of the father. [cites court cases] But the child of a white citizen and of an Indian mother, who is abandoned by his father, is nurtured and reared by the Indian mother in the tribal relation, and is recognized by the tribe as a member of it, falls under an exception to the general rule that the offspring follows the status of the father and becomes a member of the tribe of the mother. (b) Mixed bloods.— The term “mixed bloods,” used in treaties and statutes, includes persons of half, or more or less than half, Indian blood, derived either from the father or from the mother. Such persons, if they live with the tribe, are Indians.⁸⁷

Kappler cites a long list of cases and statutes that contributed to this compilation. Notably, these cases cite the ‘one drop rule’ applied to Blacks of mixed ancestry, as well as Natives of mixed ancestry.

The change in 1934, then, was not a drastic or unprecedented one. Rather, it solidified the otherwise hazy concept of blood quantum that was already in circulation among government officials. As the Secretary of the Interior noted in 1934,

The bill involves several matters contrary to the existing practice. Under present regulations the degree of Indian blood is not a factor in the determination of tribal rights, which depend upon birth into the tribe on the reservation, affiliation with the Indians and recognition by them as a member of the tribe. Hence, with certain

⁸⁷ “Indians” from Cyc (reprinted with New Cases), Kappler, 720–721.

exceptions, not important here, children born in a white community after parents have abandoned tribal relations would not be entitled to tribal membership and rights. The bill admits to enrollment all children up to one fourth degree of Menominee blood (except descendants of participants in the “half-breed payment”), no matter where born and regardless of tribal affiliation and recognition, and excludes those of a lesser degree even though born to members of the tribe on the reservation, among the Indians and affiliating with them. In other words it makes blood the sole test of tribal membership in the future as to this tribe, instead of the existing criteria of birth into, affiliation with, and recognition by the tribe.⁸⁸

Notably, he recommended that, while limiting blood quantum was a ‘sound’ plan, there should be limits on birth, affiliation, and residency.

Conclusion

The years 1887 and 1934 are both significant markers in the history of American Native policy, as well as of the relationship between law and mixed-ancestry identity. But they also represent parts of a continuing discourse about mixed-ancestry Natives that began long before allotment in 1887 and carried on long after the Howard-Wheeler act in 1934. Racial ambiguity is an evident part of the mixed-race discourse throughout the nineteenth and into the twentieth century. It began in the treaty era, though quietly and without effect, and grew louder with the close of the nineteenth century. By the first decades of the twentieth century, the debate was in full swing, and expressed concerns about mixed-ancestry Natives became more frequent and demanding.

It does not begin as abruptly as the passing of more concise blood quantum rules in 1934 would have us believe. Blood quantum as a solution to racial ambiguity was a persistent idea that followed Aboriginal policy from at least the early nineteenth century. There were various practical reasons why policy makers targeted mixed ancestry natives, and land appropriation, as numerous analyses of the allotment policy have aptly demonstrated, was among the most

⁸⁸ Harold L. Ickes, Secretary of the Interior, to Edgar Howard, Chairman Committee on Indian Affairs, House of Representatives, House of Representatives Report No. 1406, Enrollment of Members of the Menominee Indian Tribe, 73rd Congress, 2nd session, 30 April 1934.

significant. Redefining mixed ancestry Natives in law as ‘regular’ US citizens severed their ties to the land and their Indigenous rights to it. Consequently, the allotment process opened land to both settlement and taxation for growing states. Undoubtedly, there are sound pragmatic concerns that help us understand racial categorization and policies that transitioned mixed-ancestry Natives from one category to another.

However, this is what we see on the surface. Beneath the appropriation of land, beyond the goals of nation-building, and even past removal was an underlying paradigm that people belong in certain categories. This becomes more evident with an interrogation of the goals of Indian policy. The ideology lurking beneath the practice tells us that race was an imagined binary, much as Said’s work has shown us. Furthermore, it has shown us that people do not fit neatly into that binary, much as Bhabha has suggested. Instead, the relationship between ‘mixed blood’ and ‘Native American’ resembled his concept of periphery and center: categories of race were continually redefined in relation to the presence of ‘mixed race. Administrators sought to fit mixed-ancestry Natives into the racial binary of colonialism: Indians and whites. They were not consistent in this process, and their motives were not always visible. In other words, the uncomfortable presence of racial ambiguity – seen here as mixed-ancestry Natives – was one of the driving factors behind policy throughout the nineteenth century and into the twentieth. More specifically, the desire to eliminate that ambiguity, to define and fix the status of mixed-ancestry Natives in the Indian-white binary, was a significant shaping factor in Native American policy.

Chapter 6 - Australia: Absorbing Blood

In 1937, the Chief Protectors and Boards from most of Australia's state and territorial governments met in Canberra to discuss the 'destiny of the race.'¹ For the conference participants, that ultimately meant solving what had for most states become 'the half-caste problem. Professor John Burton Cleland, a South Australian pathologist who often consulted on Aboriginal affairs, put it most succinctly in his presentation to the conference:

The number of half-castes in certain parts of Australia is increasing... This may be the beginning of a possible problem of the future. A very unfortunate situation would arise if a large half-caste population breeding within themselves eventually arose in any of the Australian States. It seems to me that there can be only one satisfactory solution to the half-caste problem, and that is the ultimate absorption of these persons in the white population. I think that this will not necessarily lead in any way to a deterioration of type, inasmuch as racial intermixtures seem, in most cases, to lead to increased virility.²

Cleland's speech reflected the language of theories on racial mixing, particularly the debates over the supposed 'increased virility' of white races that would come with 'miscegenation. Other conference participants would go on to vehemently disagree with Cleland in the days to follow. Their debates would, indeed, reflect those that had taken place among scientists in late-nineteenth-century Europe: was racial mixing beneficial or detrimental? This was no small matter, since the proposed direction in Aboriginal policy was assimilation for 'mixed-race' Aboriginal people.

Ultimately, the conference members left with an agreement to pursue a common policy. Ministers acceded that 'mixed-race' Aboriginal people should be assimilated, and Aboriginal people, segregated. But by accident or design, this was precisely what states had already been practicing for decades – as early as the 1880s in some cases. A New South Wales member of the

¹ Only Tasmania was absent.

² Commonwealth of Australia. Aboriginal Welfare – Initial Conference of Commonwealth and State Aboriginal Authorities. Canberra, 1937 [hereinafter, 1937 Aboriginal Welfare Conference]. Professor J.B. Cleland, 10.

legislature had confirmed as much in 1883 when he argued that Aboriginal people should be allowed to continue living in their traditional territories while “the younger half-castes should be withdrawn from their midst and gradually absorbed into the general community.”³ The conclusions of the 1937 conference, then, were not that much different from the policies already in place. Aboriginal people and ‘mixed-race’ Aboriginal people should be treated separately and differently.⁴

This dual policy of assimilation/segregation pointed to the very centre of the contradictions in Aboriginal policy. On the one hand, most state governments purported to impose a policy of assimilation, some even through an explicit program of biological absorption. Discourses on racial mixing specific to tropical areas often claimed that ‘miscegenation’ would produce a more physically viable population that was better suited in temperament and physiology to the climate. These theories warned that Australia might not be suitable for individuals of European ancestry, but intermixing with the local Aboriginal populations could change that. Scientific theories also maintained that Aboriginal people in Australia belonged to the Caucasian group, despite their darker skin, and thus could be readily absorbed into the mainstream (and largely white) population. They claimed that any physical markers of the ‘Aboriginal race’ would disappear. The combination of these two streams in scientific thought were reflected in support for Aboriginal policies of assimilation.⁵

However, goals of assimilation were opposed and thwarted by opposing beliefs based in popular attitudes and public fears about the ‘dangers’ of racial mixing. Strong anti-miscegenetic

³ New South Wales. Legislative Assembly, *Aboriginal Mission Stations at Warangesda and Maloga*, 1883, 4.

⁴ Australian historiography often cites 1937 as a turning point in Aboriginal policy from one of protection and segregation to one of assimilation. As noted, this is not entirely accurate: while most policy officials maintained that so-called ‘full bloods’ should remain segregated, most also believed that mixed-ancestry Natives should be assimilated. See for instance, Larissa Behrendt, Chris Cunneen, and Terry Libesman, *Indigenous Legal Relations in Australia* (South Melbourne, Vic.: Oxford University Press Australia & New Zealand, 2009), 27.

⁵ For a discussion about attitudes towards miscegenation and hybridity in early twentieth-century Australia, see Anderson, “Ambiguities of Race.”

feelings among both policy officials and the wider public ensured that policies of assimilation would not be unanimously supported. These attitudes were also reflected in policies that ultimately sought to keep Aboriginal people, even those of mixed ancestry, from truly integrating into towns and cities. The result was policies that were ambiguous and ambivalent, demonstrating broader transnational debates about race and racial mixing. This uncertainty manifested itself in a number of ways, but especially in the legally enforced anti-miscegenetic sentiments that were codified into legislation. Racial mixing, then, produced laws that were inherently contradictory: they simultaneously purported assimilation and segregation.⁶

In Australia, there is no great revelation in acknowledging that racial mixing played an important role in Aboriginal policy. Unlike the more tacit forms of racial thinking that influenced policy in Canada and the US, the discourse of racial mixing in Australia is more readily apparent. Government officials were blatant about their thoughts on racial mixing. They rarely minced words, as will be evident throughout this chapter, and gave little consideration for how those words might be interpreted half a century later. While there were many differences in Aboriginal policy from state to state, two factors were shared: ‘mixed-race’ Aboriginal people were viewed as *the* primary ‘Aboriginal problem’; and there was significant ambiguity and ambivalence about what the solution to that ‘problem’ was. Administrators could never form a consensus on whether ‘mixed-race’ Aboriginal people should be considered Aboriginal. Contradictory policies and ambivalent positions were especially evident in key areas across states: legal definitions of both ‘Aboriginal’ and ‘half-caste,’ policies of exemption, the regulation of girls and women, the close scrutiny of Aboriginal labour contracts, and the regulation of marriage. As in Canada and the US, there was an inherent tension between the ideal of a racial dichotomy and the reality of social and cultural hybridity. Fundamentally, the ambiguity and ambivalence of scientific ideas

⁶ It is widely held that biological absorption was a policy considered only prior to WWII.

about mixed race were reflected in policies that expressed a tension between biological absorption and anti-miscegenetic sentiments.

The ‘Half-caste’ Problem

As evidenced by the proceedings of the 1937 Native Welfare Conference, there was little question that governments saw ‘half-castes’ as a problem that required the intervention of a specific policy. Increasingly, the racially mixed were viewed as something to be monitored, controlled, and even thwarted. For example, officials in New South Wales at the end of the nineteenth century expressed concern about the growing number of ‘half-castes. The ‘solution’ was widely contested, but there, as in Victoria, officials saw assimilation as the only viable option. As the Board wrote in 1888, “it is hoped that whilst no special scandal arises from their presence in the community their absorption into the general population may at some future date be accomplished.”⁷ That absorption would be greatly hindered by a stronger anti-miscegenetic sentiment that thwarted policy goals until well into the twentieth century.

As in Canada and the US, there was a context to how Aboriginal policies were framed. In all three countries, the management and administration of Aboriginal populations was one that came with costs, and governments as well as the public supported that undertaking only begrudgingly. There were always pressures, especially from the political opposition, to justify and reduce those costs. In 1886, for instance, a debate in the Victoria legislature highlighted the financial burden of Aboriginal policy. As one member said, the intent of the proposed Aboriginal protection bill “was introduced chiefly with the object of making the half-castes useful members of society, and gradually relieving the State of the cost of their maintenance.”⁸ Another member

⁷New South Wales, *Legislative Assembly*. Protection of the Aborigines, Report of the Board [hereinafter, NSW Protection Report], 1888, 1.

⁸ Victoria, *Parliamentary Debates*, Mr. Deakin 15 December 1886, 2912.

agreed, and added that “he believed [the bill] represented the unanimous wish of the people of the country with regard to the half-castes.”⁹ In short, the notion that ‘half-castes’ represented an additional burden on the public purse was a factor in policy considerations about them.

Again, dividing pragmatic from ideological causes to human behaviour is not always possible. Indeed, governments were concerned about fiscal responsibilities; yet decisions about Aboriginal policy were not made solely on economy. Although Australia did not recognize the same legal responsibilities concerning Aboriginal title as Canada and the US did, it did acknowledge its humanitarian obligations. They factored in significantly to the development of policy in Australia, perhaps more so than in the other two countries discussed here. Furthermore, as many states acknowledged, it was not as simple as legislating them out of existence. Even if Aboriginal people were ‘de-Indianized,’ there still remained the issue of biological absorption. Those who did support this policy felt that integration must be closely monitored and carefully regulated if it was to be ‘successful. Many officials from a variety of state governments believed that the ‘problem’ was more long term than such swift legal action could remedy. Moreover, one of the major theories of the day was that assimilation could only happen over successive generations: it could not be achieved immediately or swiftly. If this were in fact the case, states with higher populations of Aboriginal and ‘mixed race’ Aboriginal people would have greater ‘obligations.’

But there was another, larger ‘problem. The fear that ‘half-castes’ would overtake the white population reflected strong anti-miscegenetic sentiments that would act as a counterforce to those humanitarian concerns. New South Wales was among the first to report this population increase. Reporting in 1903, the chief protector intimated that, “The number of full-bloods is gradually decreasing, as last year’s census shows that there are now only 2786 as against 6540 in

⁹ Ibid., Mr. McLean, 15 December 1886, 2913.

1882, when the first census was taken, though the ‘half-castes’ have increased from 2379 to 4148.”¹⁰ He was not alone in his concerns with numbers, as the opening quote to this chapter suggests.¹¹ Whether or not these concerns were based in actual numbers or simply racists’ fears is debatable, and perhaps even unimportant for the purposes here. Instead, the mere articulation of such fears, especially in official records, suggests the potency and tenacity of these attitudes. As Amselle suggests, documenting populations and their traits is the starting point to assigning difference. While neither Canada nor the US kept track of population counts as meticulously as Australian officials did, they all three participated in attempts to identify individuals of mixed-race in official records. The recording of populations and the consistent albeit failed attempts to divide them into categories based on blood quantum also suggests the place these issues occupied in government agendas. Despite a policy of assimilation, ‘half-castes’ in Australia continued to be considered Aboriginal by non-Aboriginals, and the racial anxieties were expressed in the words and actions of officials who ultimately feared that a ‘half-caste’ population would take over and supplant a white one.

These fears were perhaps most prevalent in the Northern Territory where racial demographics made a majority ‘half-caste’ population a distinct possibility. The Territory’s settler population was already small. But in the early twentieth century, it was also shrinking. Combined with a relatively larger Aboriginal and ‘half-caste’ population, government officials and the public alike expressed alarm about the potential to be ‘outnumbered. As Chief Protector Cecil Cook remarked,

There is now a population of half-castes numbering one-fifth the total whites, and having a natural increase of 18 per 1000 compared with the white rates of minus .3 per 1000, and it is only a matter of a few years before the half-caste population will approximate that of the white population. In my opinion, the Northern Territory cannot

¹⁰ NSW Protection Report, 1903, 2.

¹¹ Professor Cleland, South Australia. 1937 Aboriginal Welfare Conference, 13.

absorb all those people in employment, and, consequently, the question of disposing the half-caste population arises.¹²

As Cook went on to describe, the problem was not just one of ‘taking over,’ but also where they would be employed. The assumption remained that ‘half-castes’ would only be offered a limited number of jobs, leaving preference to ‘white citizens. Cook’s racial anxieties were couched as labour concerns, but the subtext of his comments suggested more. This sentiment not only reflected specific attitudes towards Aboriginal peoples, it also paralleled popular attitudes towards immigrant racial ‘others’ that were perceived as threats to white labourers.

Similar fears about rapid increases in the ‘half-caste’ population were also expressed in Western Australia, even well into the middle of the twentieth century.¹³ Officials feared that the conditions in Australia were optimal for widespread miscegenation, resulting in the overtaking or even elimination the white population. These fears contrasted with other beliefs that Aboriginal people could be readily absorbed into the white population and eventually ‘disappear,’ but coincided with the policy of a ‘white Australia’ between 1901 and 1949. Although this policy focused on the restriction of immigrants, especially Asians and Pacific Islanders, Aboriginal people clearly did not fit into the world conceived by that policy.¹⁴ These competing and contradictory streams indicated overarching ambivalent attitudes towards Aboriginal people of mixed ancestry.

¹² Dr. Cook, Northern Territory, *Ibid.*, 18-19.

¹³ Western Australia. “Report of the Special Committee on Native Matters (With particular reference to adequate finance), 1958, 7.

¹⁴ Concerns about racial mixing and the creation of a ‘white Australia’ were not limited to Aboriginal policies; they also included racial others, especially Asians, and intermixing among those groups. Of particular concern was the tropical north, which, as some theories posited, were not suitable climates for whites. See W. P Anderson, *The Cultivation of Whiteness Science, Health and Racial Destiny in Australia*, New ed. (Carlton, Vic: Melbourne University Press, 2005).

Racial Anxiety and Legal Definitions

Australian racial anxieties about a growing ‘mixed-race’ Aboriginal population quickly translated into anti-miscegenetic policies and practices. Laws that sought to control Aboriginal peoples regulated marriage, threatened to punish white men who had sex with Aboriginal women, and even claimed the right to examine Aboriginal people for sexually transmitted disease, sometimes without their consent.¹⁵ But in a country of state and territorial governments that repeatedly and clearly claimed a goal of assimilation, laws and policies just as repeatedly and clearly worked to the contrary. It was particularly in the legal prohibitions in place to discourage relationships between the races – and especially between white men and Aboriginal women – that the obvious contradiction of policy was most evident.

As introduced in Chapter Three, Aboriginal policy in Australia was framed by a series of state-level acts commonly titled “Aborigines Protection Acts,” called so because of their initial premise to protect Indigenous peoples from the perils of colonization.¹⁶ In actuality, they legalized forced assimilation. Comparable to Canada’s Indian Act in many ways, these acts defined and restricted the lives and identities of Indigenous peoples in an attempt to assimilate them by regulating their activities in labour, marriage, travel, residency, lifestyle, alcohol consumption, and firearms possession. More significantly for the purposes here, they spelled out the terms by which ‘mixed-race’ Aboriginal people would cease to be Aboriginal. These laws were introduced at varying times across the Australian continent, a process that reflected the varying rates of colonization. Victoria, New South Wales, and Western Australia witnessed early colonization and thus, an earlier introduction of these acts compared to states like Queensland and the Northern Territory, which were colonized later and much more sparsely than the eastern

¹⁵ For instance, *Aborigines Protection Act* NSW (1936) sec. 14a.

¹⁶ Aboriginal policy remained a state matter until a 1950 resolution by the Commonwealth of Australia sought to centralize Aboriginal administration in the federal government. Commonwealth of Australia, *Parliamentary Debates*, Session 1950. 14 Geo VI. Vol. 208: 3977.

seaboard states. In any event, they were enacted throughout Australia, introduced between 1869 and 1911, and followed a surprisingly similar pattern in terms of how they targeted individuals of mixed ancestry. Ultimately, they all expressed fears and anxieties about racial mixing; but they all also expressed ambiguity and uncertainty about it, too.

How ‘mixed-race’ Aboriginal people were ultimately defined in law often came down to how they lived and with whom they lived. Those who were ‘living among the Aborigines,’ as it was often stated in legislation, would also be classified as Aboriginal people. But those deemed capable of assimilation or whose skin tone was ‘too light’ were declassified as ‘Aboriginal’ under the law. Both administrators and members of the public often expressed disapproval of ‘near whites’ living on Aboriginal reserves or in camps. To them, it seemed inappropriate and unnatural. Notions of racial purity and ‘authenticity’ factored into how Aboriginal people were categorized, and those who did not carry enough of those racial markers lost their status as Aboriginal. In these cases, they were forced to move into towns and cities, as laws prohibited non-Aboriginals from residing in Aboriginal communities such as reserves, stations, or even camps. Administrators met many challenges as this policy had the effect of separating family members from each other. Aboriginal people resisted when they could, often in more subtle ways like establishing residence on the fringes of official Aboriginal communities in order to maintain close proximity to their family and friends.¹⁷

Nonetheless, individual state policies and the definitions created by them shared similar principles. First, mixed-descent individuals were divided from those considered ‘full-blood’ Aboriginals. This sometimes had little practical effect, but other times, it came with serious consequence such as being disqualified from receiving certain state benefits, or from

¹⁷ There are references in archival records where government officials commented, usually with disapproval, on the presence of these ‘fringe’ communities. See for instance 1948 Western Australia Report on Survey of Natives Affairs.

participating in government programs created specifically for Aboriginal peoples. Second, the protector was made legal guardian over all Aboriginal and 'half-caste' children. This granted him the means to target 'mixed-race' Aboriginal children for assimilation, either for removal to institutions, or for older children, labour contracts. Third, special regulations were included for girls to help reduce racial mixing. Finally, and closely related to the third, marriages were often controlled by the state and would usually only be approved when they resulted in the dilution of Aboriginal blood.

Definitions were key to the mixed race discourse that emerged in Australian law. The first of these acts was Victoria's 1869 Aborigines Protection Act. This act identified and defined 'mixed-race' Aboriginal people, or 'half-castes,' and considered those living or associating with Aboriginal people to also be Aboriginal. Herein was the kind of inherent contradiction that would become a hallmark of legal definitions of 'half-castes': although distinguished from Aboriginal, they were still classified as Aboriginal. The first Aborigines Protection Act in Western Australia in 1886 and Queensland in 1897 both included an almost-exact definition of 'half-castes. They both defined the term, not by a specific blood quantum (suggested or stated), but rather, by where and how they lived. Those who lived 'as Aboriginal' and with Aboriginal people in camps, reserves, or stations recognized as Aboriginal communities were accordingly considered Aboriginal. Racial ascription thus took on a specific lifestyle criterion, vague as it might have been, in a vein similar to Canada's use of "Indian mode of life" in attempting to distinguish Halfbreeds from Indians during the scrip policy. What defined a 'half-caste,' then, was assumed and not clearly articulated. This, too, would be a common feature among Aboriginal policy in all three countries.

In fact, legal definitions demonstrated the very ambiguity that was characteristic of racial thinking. While definitions of ‘Aboriginal’ might be considered central to Aboriginal policy, definitions of ‘half-caste,’ like definitions of other mixed-ancestry Natives in Canada and the US, would prove to be central to understanding the contradictions and ambiguities of that policy. But the apparent confusion was even more evident in Australia where ‘half-castes’ were simultaneously considered ‘Aboriginal’ and constituted their own separate category within protection acts. While this contradiction presented a number of fallacies of logic, administrators felt this dual definition was necessary to facilitate the policy of assimilation, and further supports the argument that a two-policy system, one for ‘Aboriginals’ and one for ‘half-castes,’ had always been followed. A memo from E. Guinness, Protector in Victoria in 1886, laid out the reasons why the Aboriginal population would be divided into these two legal categories. He explained that “the object of the bill is ... directed with the view as far as possible of merging half-castes and other persons of mixed aboriginal and European blood into the general population.”¹⁸ Legally designating individuals of mixed ancestry as ‘Aboriginal’ by law would make it easier to identify those who were to be assimilated. Guinness was aware of the “arbitrary” nature of this distinction, given the difficulty of establishing blood quantum or its relevance to lifestyle, but felt the distinction was necessary for the purposes of designating policies of segregation or protection and assimilation. As he explained, it allowed all ‘mixed-race’ Aboriginal people to come under the bill.¹⁹

As the mixed ancestry population increased (or, as officials and the public became more aware of that increase), legal definitions became more detailed and complex. By the first decades of the twentieth century, they came to include additional and sometimes complex and

¹⁸ Public Records Office of Victoria (PROV), VPRS 10265, Box 266, E. Guinness, 30 September 1886.

¹⁹ Ibid..

contradictory criteria in an attempt to distinguish so-called ‘full bloods’ from ‘half-castes. Despite the many differences among the states’ laws, there was a common pattern: increasing concern and ambiguity over the presence of ‘mixed-race’ Aboriginal people and their role in society. The evolution of legislation in Victoria serves as an apt example. Its first act in 1869 included ‘half-castes’ as Aboriginal if they lived as and with Aboriginal people – a stipulation not dissimilar from Canada’s pre-Indian Act legislation. However, in 1886, an amendment made sweeping and broad changes to that definition. First, it separated definitions of ‘half-caste’ and Aboriginal, albeit with the same ambiguity that usually accompanied attempts to define the racially mixed.²⁰ As other states would also do eventually, it excluded ‘mixed-race’ Aboriginal people from being included legally as Aboriginal in certain aspects of the act. In effect, this exclusion granted power to administrators to deny benefits (such as rations) or residency on an Aboriginal station or reserve without actual cause – a way to maintain legal control over ‘mixed-race’ Aboriginal people without according them the status of Aboriginal people and the concessions that might go with that status.

These broad yet ambiguous definitions served another function: they extended administrative powers over undefined populations. First, they allowed governments to avoid the finality of blood quantum rules. Unqualified references to descent granted administrative power over Aboriginal people of any degree of Aboriginal ‘blood,’ not just those who fit the literal criterion of ‘half-caste’ or 50 percent blood quantum.²¹ Second, they also extended their powers by including ‘mixed-race’ Aboriginal people who lived or associated with Aboriginal people, as well as mixed-race females who were married to Aboriginal men. Thus, two things occurred simultaneously with these definitions: first, ‘mixed-race’ Aboriginal people were being

²⁰ *Aborigines Act* (VIC), 1886, sec. 3.

²¹ PROV, VPRS 10265/266, Memo, 30 September 1886, E. Guinness.

separately defined from purportedly ‘full-blood’ Aboriginal people; and second, both definitions were increasingly complex and contradictory. In particular, there was an inherent contradiction in separately defining ‘half-caste’ and Aboriginal, then including ‘half-castes’ within the definition of Aboriginal. This contradiction paralleled the ambivalence that was produced from the scientific debates over racial mixing.

The increasing concern over the presence of ‘mixed-race’ Aboriginal people became evident in Victoria’s next amendment. In 1910, the act was extended to include power over all ‘half-castes,’ not just those identified in the 1890 definition. According to legal scholar John McCorquodale, this had the effect of removing the distinction between ‘mixed-race’ Aboriginal people and those considered ‘full blood.’²² Either way, this distinction would be short lived. In 1915, another amendment reinstated this distinction, an oscillation that reflected ambivalence about the implications of racial mixing. The amendment read, “The term half-caste whenever it occurs in this Act includes as well half-castes as all other persons whatever of mixed aboriginal blood; but when used elsewhere than in this and the next succeeding section the term shall unless the context requires a different meaning be read and construed as excluding such half-castes as under the provisions of this Act are to be deemed to be aboriginals.”²³ If ever there was a case of confusing and incomprehensible legalese, it was here. While administrators attempted, on the one hand, to include ‘mixed-race’ Aboriginal people under the power of the act, they on the other hand explicitly excluded them. In effect, the legislation allowed them complete discretionary power over ‘mixed-race’ Aboriginal people without having to resolve the inherent ambivalence towards ‘mixed-race’ Aboriginal people.

²² John McCorquodale, *Aborigines and the Law: A Digest* (Canberra: Aboriginal Studies Press, 1987), 82.

²³ *Aborigines Act*, 1915 (VIC), sec. 4.

If Victoria's legislation did not reflect serious ambiguity, then Queensland's legislation certainly would provide a potent example. Its first act in 1897 defined 'half-castes' as Aboriginal if they lived or associated with Aboriginal people – quite similar in wording and intent to the first acts in New South Wales, Victoria, and Western Australia. What distinguished Queensland's legislation, though, was its definition of 'mixed-race' Aboriginal people as "the offspring of an Aboriginal mother and other than an Aboriginal father" – a wording which suggested the same confusion and genealogical ignorance as Canada's scrip policy in the 1880s. Officials did not initially fathom that two 'mixed-race' Aboriginal people might have a child together, nor that any other combination of parents would produce a 'half-caste' child – perhaps indicative of the debates in science over the effects of racial mixing on fertility. Initially, then, 'half-caste' in Queensland was understood to indicate a child born of a white father and an Aboriginal mother, which by definition, excluded a child born of a half-caste mother and a half-caste father. So, some administrators clearly understood 'half-caste' in the strictest of terms, suggesting 'mixed-race' Aboriginal people had one Aboriginal and one white parent. In reality, though, and because of confused or absent definitions, 'half-caste' could just as easily refer to the offspring of two parents of mixed ancestry. Furthermore, the ambiguous legal definitions of 'half-caste' and its casual usage among both administrators and the public suggested that 'half-caste' was not used to describe someone with 50 per cent Aboriginal blood quantum, and did not only include individuals of the specified parentage. Instead, and in contrast to the text of the law, the term was used to identify any person of mixed ancestry.

Queensland's next major amendment in 1934 expanded this definition. It included a lengthy addition to its definition of Aboriginal that combined the contradictory terms of residency, lifestyle, and blood quantum. Only under certain conditions, though, would blood

quantum be considered with residency – usually when an official found it difficult to establish parentage with any certainty. Residency also extended to spouses, indicating that mixed-ancestry Aboriginal individuals not deemed ‘half-caste’ under the act would acquire a legal Aboriginal status through marriage.²⁴ In this way, the definitions of ‘Aboriginal’ and ‘half-caste’ collectively covered all individuals of Aboriginal ancestry. Thus, in the course of time between the two acts, thinking on ‘mixed-race’ Aboriginal people was changing rapidly: officials and the public were becoming increasingly concerned about the implications of racial mixing and ambivalent about its consequences, especially as successive generations proved how complex racial mixing could be in a world attempting to maintain racial boundaries. In turn, legislative efforts extended the power of protection boards to encompass as many Aboriginal people as possible. But this drive for control was countered by continuing ambivalence about where ‘mixed-race’ Aboriginal people belonged in Australian society. Thus, complicated and ambiguous definitions not only reflected attempts at broad sweeping powers: they also reflected attempts to bring clarity to ambiguity.

The evolution of the definition of ‘half-castes’ in Western Australia was even more illuminating, in part because of the major difference in racial demographics. In every other state in Australia, Aboriginal people constituted minorities; but in Western Australia, they were the growing majority, a fact further illuminated by a declining birthrate among Australians of European ancestry after 1890. Its first act in 1886 was very much in keeping with other states: ‘mixed-race’ Aboriginal people were defined as Aboriginal if they lived as and with Aboriginal people. One notable difference was that judges were granted the authority to decide if someone was Aboriginal. The act stated that a judge could “in the absence of other sufficient evidence, decide on his or their own view and judgment whether any person with reference to whom any

²⁴ *The Aboriginal Protection and Restriction of the Sale of Opium Acts Amendment 1934 (QUL)*.

proceedings shall have been taken under this act is or is not an Aboriginal.”²⁵ Thus, skin colour and other visual characteristics grew in importance and potentially to the exclusion of other important cultural factors. As racial mixing became a great concern throughout Australia, visible biological features like skin colour and facial features took precedence over lifestyle, kinship and residency in determining identity.

The major challenge for officials in most states was creating a definition that did not interfere with policy directives, whether they be for segregation or assimilation. Definitions had to be inclusive enough to give Boards control over as many Aboriginal people and descendants as they wanted without interfering with those who were living in mainstream society, especially those ‘mixed-race’ Aboriginal people. As one member of Parliament noted during the debate over the 1909 Aborigines Protection bill in New South Wales, the act should not interfere with ‘mixed-race’ Aboriginal people “who elected to lead the life of white men, and to go out working for their living” – what this particular official called “an ordinary decent life.”²⁶ In fact, the stated primary purpose of New South Wales’ 1909 act was to focus on what was considered the ‘half-caste problem. For New South Wales, as elsewhere, this was a combination of social, health, and moral issues that included disease, prostitution, premarital and interracial sex, and illegitimate children unclaimed by their white fathers. From the perspectives of policy makers, these were social transgressions that challenged the centrality of the nuclear family to the social fabric of a newly forming country in a vulnerable state. This bill would provide greater control over and reduction of a mixed population, and thus, rectify this problem.

According to the New South Wales government, the problem only increased. In 1914, amendments were again proposed to remedy the ‘half-caste problem. Greater powers over

²⁵ *The Aborigines Protection Act (WA)*, 1886, s.45.

²⁶ New South Wales, *Parliamentary Debates*, 15 December 1909, 4541.

children would be granted, allowing the Board to remove them without consent. The problem for officials was that some Aboriginal individuals were able to avoid the reaches of the law by moving out of state. Some parents relocated in close-by Victoria where the New South Wales law no longer applied. Since states often made residency a requirement for the definition of Aboriginal, Aboriginal people of New South Wales would not be considered Aboriginal in Victoria and consequently, not under the power of that act.²⁷ They would also be free from the New South Wales act if they were not physically present in that state. Indeed, this was the case throughout Australia and a way in which Aboriginal people could circumvent the paternalistic control of the law: simply by moving across state lines.

Aboriginal or half-caste?

The factors that went into creating categories of ‘Aboriginal’ or ‘half-caste’ extended beyond legal definitions. Indeed, even how those legal definitions were applied in practice was never as clear or consistent as the law – and the law was rarely clear or consistent. Instead, officials showed far greater ambiguity about where ‘half-castes’ belonged. As legislation in some states suggested, residency was a significant factor in determining status or identity of those individuals who might otherwise be considered racially ambiguous. But sometimes ‘mixed-race’ Aboriginal people were included as Aboriginals no matter what their living situation. For instance, a 1948 survey report in Western Australia claimed that in terms of labour, ‘half-castes’ were not equal to whites and should be considered on par with Aboriginals. F.E.A. Bateman, magistrate and author of the report, believed that “neither his living conditions nor his commitments are comparable with those of the white.”²⁸ Bateman’s comments served as an apt example of the ambivalence Australians felt towards ‘mixed race’ Aboriginal people: where laws

²⁷ New South Wales, *Parliamentary Debates*, 1914-15, 1354.

²⁸ 1948 Western Australia Report on Survey of Natives Affairs, 16-17.

excluded them as ‘Aboriginal,’ society excluded them as ‘white. They were also an example of the ‘relational’ way in which ‘mixed race’ people were defined.

While Bateman separated ‘half-castes’ from whites, others were clear to separate them from ‘Aboriginals. In New South Wales in 1883, the Protector noted in his annual report that ‘mixed-race’ Aboriginal people should be “compelled to work” while Aboriginals should be “aided in doing something for his own sustenance and comfort.”²⁹ Residence should also distinguish Aboriginal and ‘mixed-race’ Aboriginal people in the opinion of many administrators. In Western Australia, Moseley argued, “The native camps should contain only full blood aborigines. As I have already observed, there is a duty on the community to see that half-castes are placed in surroundings and given a training which will fit them later to take their place, if necessary, in a white civilisation.”³⁰ Of course, not all Western Australian officials agreed with this division, but states like Victoria and New South Wales had more consistently applied a distinction between the two groups.

Officials did not always separate ‘mixed race’ Aboriginal people in relation to this binary. As in Canada, a few exceptional administrators recognized the diversity that could exist among mixed populations. John Bleakley, protector in Queensland, explained that “we distinguish between cross-breeds of definite aboriginal leanings, and those of civilised leanings.” Educational policies were fitted according to these classifications, as ‘mixed-race’ Aboriginal people were more likely to receive education and vocational training than Aboriginals. Yet, this commission still “found them sorely at a disadvantage by reason of racial, educational, and

²⁹ NSW Protection Report 1883, 2.

³⁰ Western Australia. “Report of the Royal Commissioner appointed to Investigate, report, and Advise upon matters in relation to the Condition and Treatment of Aborigines,” 1935, 7.

temperamental disabilities.” Bleakley’s own ambivalence towards the education of ‘mixed-race’ Aboriginal people was thus apparent.³¹

Outside of residency, blood quantum could also make up one of the factors considered in determining status. However, instead of bringing the certitude that quantification might, it brought more ambiguity. As in the US, there was a general agreement among many officials that one-quarter blood quantum drew the line between white and Aboriginal. In reality, the rule was not held with any meaning. Even though most governments did not actually track individuals’ exact blood quantum, they attempted to distinguish ‘half-castes’ from ‘quadroons’ and ‘octoroons’ – terminology that reflected an antebellum US more than it did a typical Aboriginal policy. In part, the introduction of these terms was a response to continuing, and even increasing, ambiguity about the meaning and definition of ‘half-caste. Literally, it meant a one-half blood quantum. But as discussed above, the term was used loosely and ambiguously to define any person of mixed Aboriginal ancestry. The increasing use of these more specific terms was also a response to what was interpreted as an expanding Aboriginal population. As one official in New South Wales commented in 1912, “In the past, the only distinction made in the collection of the census has been between ‘full-bloods’ and ‘half-castes,’ and in the latter term have been embraced all who are not of the full-blood, including quadroons and octoroons, who have really no right on a reserve set apart for the use of aborigines, and will, it is hoped, be gradually weeded out.”³² Indeed, many policy makers were vehemently opposed to the inclusion of ‘lighter skinned’ Aboriginals being included as Aboriginal in the legal and financial sense.

While there were, again, concerns about the costs of Aboriginal affairs at work here, there was also an impetus to make the problem less visible. With an ‘out of sight, out of mind’

³¹ Mr. Bleakley, 1937 Aboriginal Welfare Conference, 28.

³² NSW Protection Report 1913 [1912], 2.

approach, governments solved their ‘problems’ by simply removing ‘mixed race’ Aboriginal people from Aboriginal reserves and stations. States like Victoria took up this initiative with full vigour. By simply making it illegal for ‘half-castes’ to reside at Lake Tyers, the last of the Aboriginal reserves in Victoria in the twentieth century, the ‘problem’ conveniently disappeared, at least as a government matter.³³ There, as was the case in most states, officials believed that ‘mixed-race’ Aboriginal people with light skin did not need protection and were thus ineligible for state aid. Instead, they were viewed as ‘lazy paupers’ living off the state.³⁴ For instance, one Aboriginal man was denied permission to marry a mixed-ancestry woman as, the Board explained, “the marriage of an Aboriginal to a half-caste is not desirable.” Such a marriage would also have made this man ineligible to live on the station unless this marriage was sanctioned by the Board.³⁵ It was in ways like this that the state barred ‘mixed-race’ Aboriginal people from being legally considered Aboriginal.³⁶ But this was nothing more than an opportune excuse for government officials looking to reduce their obligation: eventually, all Aboriginal people, no matter their blood quantum, would be forced into mainstream society.

As is now well known, these definitions were also used to establish wardship over Indigenous and mixed-ancestry children. The protector essentially became the sole custodian of Aboriginal children, and especially for those of mixed descent. Contrary to the basic premises of child welfare laws, the directorate could remove mixed-ancestry children from their homes, and often did, even without justifiable cause or reason. In these instances, that meant removing them

³³ The board was granted authority for this licensing process in an 1890 regulation that amended the 1886 act. PROV, VPRS B313/1, May 13, 1890.

³⁴ See for instance PROV, VPRS 01694, Unit 11.

³⁵ Secretary to Manager at L. Condah Station, Milltown, 21 May 1914. PROV, VPRS 1694, Unit 3.

³⁶ For a more extensive discussion of this situation in Victoria, see Katherine Ellinghaus, “Regulating Koori Marriages: The 1886 Victorian Aborigines Protection Act,” *Journal of Australian Studies* 25, no. 67 (2001): 2.

from the care and influence of their Aboriginal parents and placing them in state-run schools, homes, or private residences to carry out domestic and other low-skilled labour duties.

With little question, this policy was specifically designed to facilitate the biological absorption of Aboriginal people into the white population. The predominant twentieth-century belief regarding race and aboriginal people was that their physical traits could be absorbed within three generations if properly administered: within this time frame, some hypothesized, all physical traces of Aboriginal heritage would disappear. This ‘biological absorption’ was seen as an easily achievable goal since there was already a growing mixed-ancestry population. By removing them to towns and cities that were predominantly white, it was believed that they would naturally assimilate and integrate into those societies, marrying “up” (the term used for marrying white or lighter), and eventually, eliminating all traces of the Aboriginal race.

Creating definitions of Aboriginal clearly did not coincide with Aboriginal identity practices. The trauma caused by these removals, for both the children and the parents, is now well documented. But also, as elsewhere, the impositions of state law onto cultural definitions created a legacy of social and cultural alienation. Cultural and social patterns of ‘mixed-race’ Aboriginal people were evident in the officials’ reports, even if they were not respected or understood. In Western Australia in 1956, for instance, Commissioner of Native Affairs Stanley Middleton noted that there were many ‘mixed-race’ Aboriginal people who, despite their mixed genealogy, were part of Aboriginal communities. He explained that they were “fully accepted and their different skin does not count anymore.”³⁷ In addition, officials in states and territories across the country repeatedly reported that Aboriginal people objected to having their communities divided by blood quantum. The law would rarely heed those protests, though. As in

³⁷ Western Australia, Report of Aborigines Department [hereinafter, WA Protection Report], 1956, 8.

Canada and the US, the imposition of categories onto individuals of mixed ancestry would continue to clash with Aboriginal kinship systems of identity.

Sex, Marriage, and Racial Mixing

While the ambivalence of policy makers continued to complicate Aboriginal policy, the anti-miscegenetic sentiment was even more contradictory to states' goals of assimilating 'mixed-race' Aboriginal people. Administrators commented extensively and frequently on matters relating to the increase of the 'half-caste' population, particularly in regard to women and sexual conduct. The moralization of interracial unions occurred in Canada and the US, too; but it was more pronounced in Australian official discourse.³⁸ This sentiment was so entrenched, in fact, that it was legislated in most states: laws prohibited sexual relations between the races, regulated marriages to the extent of requiring approval, punished white men for associating or living with Aboriginal women, created a set of regulations to control the movement of Aboriginal women and girls, and informally regulated sexual morals among Aboriginal people, but especially among Aboriginal women and women of mixed ancestry.³⁹ Thus, while policy claimed to be working towards the assimilation of 'mixed-race' Aboriginal people, a counter force was in actuality working to maintain racial boundaries.

From the perspective of most government officials, the link among racial ambiguity, the 'problem' of mixed-race, and women was evident. As has been well established elsewhere, the associations between race and character in nineteenth-century racial thinking were often

³⁸ Sarah Carter examines the moralization of sexual unions between Aboriginal women and white men in the late-nineteenth century in Canada's west, demonstrating how derogatory images of Aboriginal women created a similar environment of 'blame. See Sarah Carter, "Categories and Terrains of Exclusion: Constructing the 'Indian Woman' in the Early Settlement Era in Western Canada," *Great Plains Quarterly* (January 1, 1993): 147-161.

³⁹ For instance, Austin argues that the 'white shame' of racial mixing drove policy and legislation. He focuses particularly on the disapproval that white Australians had for mixed-ancestry Natives living with or as Aboriginals because they had some white blood. See Tony Austin, "'A Chance to Be Decent': Northern Territory 'Half-Caste' Girls in Service in South Australia 1916-1939," *Labour History* no. 60 (May 1, 1991): 51-65.

gendered.⁴⁰ But it was perhaps more evident in Australia. As one Queensland official stated in 1896, “We can hardly expect the emotions of the savage woman to be under more severe control than those of the white. All aboriginal girls, with a few rare exceptions, would drift towards one common destination involving their own degradation and additional burdens on the State.”⁴¹ The barely disguised message remained clear: Aboriginal women were oversexed, unable to control themselves, and the cause of the ‘mixed race problem. This problem – or rather, its solution – lay in controlling this “sexual promiscuity,” as administrators all across Australia would attempt to do. Officials in all states sought to achieve this end by regulating the activities and limiting the freedom of women of Aboriginal descent – those seen as responsible for propagating a ‘half-caste race’ and those who bore the brunt of society’s scorn.

‘Propagation of the Species’

That administrators saw an increased ‘mixed-race’ population as a problem was perhaps obvious. But more specifically, what administrators saw as the propagation of a ‘mixed-race *species*’ was at the heart of this perceived problem. There were two related issues at stake here. First was the increase in the number of mixed-race individuals. Just as concerning to officials, though, were their ties to Aboriginal communities. For those who believed it would be easier, and even desirable, to assimilate ‘mixed-race’ Aboriginal peoples, continuing community connections were considered detrimental. As the 1899 annual report for Western Australia noted with alarm, “The intercourse between the races is leading to a considerable increase of half-castes. Many of them find their way into the Missions, but a far greater number are probably reared in native camps, without any sort of education. This is a question which, I think, should

⁴⁰ Stoler, *Carnal Knowledge and Imperial Power*.

⁴¹ Queensland. “Report on the Aboriginals of Queensland,” 1896, 13.

receive consideration by the Legislature.”⁴² The comment suggests that the increase of the ‘mixed-race’ Aboriginal population was implicitly an increase in the Aboriginal population. This was not an anomalous comment: for the next several years, the chief protector continued to lament the growing half-caste population, and to offer solutions in the way of marriage regulation. He expressed his “great anxiety” over “the multiplication of them in a more rapid degree in years to come.”⁴³ In order to stop propagation of a ‘half-caste’ race, women would need to be supervised, ‘mixed-race’ Aboriginal people would need to be removed from Aboriginal communities, and marriage choices would need to be carefully monitored.

In addition to concerns that ‘mixed-race’ Aboriginal people were being absorbed into Aboriginal communities were concerns that they were forming their own communities, especially in larger centers. Neither, apparently, was acceptable to Protection Board officials. Towns such as Broome in Western Australia and Alice Springs in the Northern Territory were of special concern to administrators there who were anxious about their growing ‘mixed-race’ Aboriginal populations. Moral conduct was seen as lacking especially in these centres. For instance, a 1935 Western Australia report cited “the dangers of bringing a certain type of highly sexed half-caste girl to the city.”⁴⁴ It commented further that,

Broome has, and for some time past has had, greater police protection than any other Northern or North-West town, and yet we find in the Broome Police District, according to latest returns, 417 half-castes – more than half the total half-caste population of the North. The town of Broome is not responsible for all these. Some of them have been brought from other districts to Missions within the Broome Police District, but it is generally admitted that a great number of them were born in Broome, and to-day the number of half-castes in the town itself is not far short of 150.⁴⁵

⁴² WA Protection Report 1899, 1.

⁴³ WA Protection Report 1905, 4-5.

⁴⁴ Western Australia “Report of the Royal Commissioner appointed to Investigate, report, and Advise upon matters in relation to the Condition and Treatment of Aborigines,” 1935, 15.

⁴⁵ *Ibid.*, 9.

Part of the solution, according to this official, was to keep Aboriginal camps a distance from town limits. This would supposedly reduce the amount of contact between Aboriginals and whites, and thus, put a check on the growing mixed-ancestry population. Logic obviously defied this particular administrator: 'half-castes' would continue to increase as a result of endogenous pairing.

The anti-miscegenetic sentiment was almost as noticeable in Australia as it was in US in regard to African Americans. Government officials, including Western Australia's Moseley, commented openly: "it is regrettable that my investigations have satisfied me that in certain parts of the North intercourse between the white man and the aboriginal woman exists to a degree which is as amazing as it is undesirable."⁴⁶ A Queensland reverend similarly recommended that it was desirable to stop "promiscuous intercourse of [Aboriginal] women with Europeans."⁴⁷ Indeed, racial mixing appeared to be a personal affront to some of its observers.

In addition to this personal affront, and in violation of a widely accepted British code of ethics, one of the problems of racial mixing was the sheer difficulty of identifying and classifying individuals. As one official in Victoria made blatantly clear in his 1957 report, 'mixed-race' Aboriginal people fundamentally disrupted the order of census-taking and statistics production. He complained that,

The principal inaccuracy arises from the difficulty of assessing the percentage of aboriginal blood in many cases. Over the succeeding generations, dating from the very early days of settlement till now, there has been such a high degree of miscegenation, and of sexual promiscuity on the part of aboriginal women and white men (and some coloured men of other nationalities), that such an assessment could, at best, be only approximate. Personal observation on my visits to aboriginal communities indicated that, included in the figures given, were some who were fairly obviously of less than

⁴⁶ Ibid.

⁴⁷ Queensland, *Legislative Assembly*. Reverend Duncan McNab, "Report of Board of Inquiry Appointed by the Secretary for Lands to Inquire into and report upon the State of the Aboriginal Reserve at Mackay," 1876, 8.

one-fourth aboriginal blood, but who, brought up by their mothers in aboriginal communities, are generally regarded, by themselves and others, as aborigines.⁴⁸

The inability to clearly classify mixed ancestry individuals suggested the level of anxiety about racial mixing. It was made worse by ‘near-white’ individuals who, despite their appearance, lived as Aboriginals – what seemed as a contradiction to those who adhered to racial ideologies. In short, racial mixing made a person’s identity ambiguous. That in itself defied the principle of racial thinking: that people could be classified according to a set of biological traits.

Sex

The sexual activities of Aboriginal women and girls were of considerable concern for two primary reasons. Not only did they produce that unwanted mixed-ancestry population, but they also contradicted the moral code of Victorian Britain. Women were having sex out of wedlock, and were producing non-nuclear families. This, as one administrator in the Northern Territory put it, was wrong: “there is no doubt that evil is increasing, and will increase, and, though I do not think any amount of legislation would stop it, still so much check might be put upon it as would prevent that damage to both races which appears to be inevitable without legislation.”⁴⁹

This contempt was widespread, and only seldom was it accompanied by either sympathy or critical thinking about the situation of these girls and women or the cultural protocols of Aboriginal people. Rarely was consideration given to the violence and absence of consent that could often accompany these liaisons. Officials were aware of such circumstances, as the same Queensland report noted in 1896 in discussing the activities of beche-de-mer (or sea cucumber) and pearl-shell boaters on the coast of Queensland. Commissioner Archibald Meston, author of the report, acknowledged that “in some cases the women were taken by force, and in the

⁴⁸ Victoria, “Report upon the Operation of the Aborigines Act 1928 and the Regulations and Orders made Thereunder,” 1956-57, 6.

⁴⁹ WA Protection Report 1901, 5-6.

disturbance that followed one or more of the men were shot.”⁵⁰ Awareness of this incident or others like it, though, did little to incite action from government officials.⁵¹ Instead, they focused their efforts – and legislation – on prohibiting consensual unions. As Tony Austin says about the Northern Territory, “It was common knowledge that much of the conflict on the frontier was caused by the sexual exploitation of Aboriginal women. Yet retaliation by Aborigines against whites who abducted or otherwise abused their women was not regarded as noble.”⁵² Instead, Aboriginal women were blamed as the instigators of these incidents.

The opinions administrators had of Aboriginal women were low; but they were often even lower of mixed-ancestry women. A 1910 annual protection report for South Australia commented on “the sad condition of the half-castes, especially the females, who are considered by many to be a proper prey for their passions. If the half-caste female remains with the tribe we lose a possible good addition to European civilization, while with her undoubted high instincts she is not regarded as a favourable addition to the camp. If she is brought into civilization she finds no companionship, and naturally drifts downward.”⁵³ A similar sentiment was repeated in the Northern Territory in a 1938 report, where the administrator, C.T. Abbott, lamented that:

The female half-caste life’s history is generally a sad one... Most unfortunately from the age of puberty she is the prey of the degenerate white and strangely enough, but to a lesser degree, of the black. As a rule she is not so much immoral as unmoral, and does not appear to have any powers of resistance. The result is that practically every female half-caste in the Darwin area has become the mother of at least one illegitimate child and very often more than one. For the last year, since I have been here, the Quarantine Station has been used for the purpose of treating V.D. women, all of whom have been half-castes and some of whom are married women.⁵⁴

⁵⁰ Queensland. “Report on the Aborigines of Queensland,” 1896, 3.

⁵¹ For a discussion of Aboriginal female exploitation in New South Wales, see Victoria Haskins, ‘A Better Chance?’ Sexual Abuse and the Apprenticeship of Aboriginal Girls under the NSW Aborigines Protection Board. *Aboriginal History*, 28 (2004): 33-58.

⁵² Austin, *Never Trust a Government Man*, 8.

⁵³ South Australia. Report of the Protector of Aborigines [hereinafter SA Protection Report], 1910, 7.

⁵⁴ C.L.A. Abbot, NT Administrator, to Secretary, Department of the Interior, Canberra, FCT, 28 April 1938. National Library of Australia [hereinafter NLA] Chinnery Manuscript, MS 766.

Female ‘half-castes’ were thus accorded at least the *potential* to advance, but that was often all they were granted. Implicitly, they were blamed for the degradation of moral and public health.

However, white men, labelled as unscrupulous and immoral by government officials, shared some of the blame. An 1896 Queensland report claimed that “one of the first effects on a black race of contact with a white one is to excite cupidity, involving degeneracy towards a social and moral depravity that even sacrifices the virtue of the women in order that the cupidity may be gratified.”⁵⁵ The public was often involved in this persecution. Complaints were sometimes sent into the Board telling of white men living unlawfully with ‘half-caste’ women. The 1910 case of W.G. Moir in Western Australia is a case in point: Mr. Moir was convicted of an offence under s. 43 of the Aborigines Act, which stated that the cohabitation of a non-Aboriginal man with an Aboriginal woman was punishable by a fine. Mr. Moir believed that the girl was not an Aboriginal under the act, having lived with white people her whole life (or, at least that is what he claimed). The Chief Protector of Western Australia, C.F. Gale, deemed that she was in fact Aboriginal under the law. As a ‘half-caste’ who had resided with her mother (considered a ‘full blood’ Aboriginal person), Gale declared the daughter an Aboriginal under the law, making their relationship criminal. It was ‘concerned citizens’ writing into the department to report these specific incidents that made the law, otherwise difficult to enforce, any success at all.⁵⁶ The public then served as a check on otherwise unenforceable anti-miscegenation laws.⁵⁷

⁵⁵ Queensland. “Report on the Aborigines of Queensland,” 1896, 3.

⁵⁶ State Records Office of Western Australia [hereinafter SRO WA] File 96/10.

⁵⁷ Ballantyne suggests that this did not include all men, but a particular sub-class: “The empire could be divided into vigorous Aryans (most notably the ‘energetic’ British colonizers themselves), degenerate Aryan communities whose cultural vitality had been enervated by intermarriage, and backward non-Aryan peoples whose cultures might be ‘leavened’ through contact with Aryan rulers.” Tony Ballantyne, *Orientalism and Race* (New York: Palgrave Macmillan, 2007), 4.

White men, then, were included in laws to punish them for consorting with Aboriginal women. Interracial sex became posited as an ‘unnatural’ act in terms of scientifically-informed anti-miscegenetic attitudes, as well as a moral violation in terms of Victorian principles of social conduct. ‘Mixed-race’ Aboriginal people thus took on the additional scorn of society. The 1934 Queensland act included the punishment of non-Aboriginal males for consorting, cohabiting, or soliciting any Aboriginal female for “immoral purposes” or “carnal knowledge.”⁵⁸ For white men engaging in sexual relations with Aboriginal women, the issue was not so much the act as it was their lack of responsibility for the child afterward. As Neville asserted at the 1937 Commonwealth Conference, “What does matter is that, when a child is born and the father cannot be found, the child becomes a charge upon the state.”⁵⁹ Indeed, these fathers were not encouraged by the fine awaiting them to come forth and claim their children. As Austin notes for the Northern Territory in 1920-21, “there were 20 recorded births of ‘half-castes’ and ‘quadroons,’ but there was sufficient evidence for the Courts to compel only one father to contribute to a child’s maintenance.”⁶⁰ In a country that overwhelmingly claimed assimilation through biological integration as its main goal, anti-miscegenetic laws were an obvious but unexplained contrast.

Unsurprisingly, not everyone agreed, and some even fully supported racial mixing. A.O. Neville, Chief Protector of Western Australia, is probably the best known of these, depicted as he is in the popular movie *Rabbit-Proof Fence* attempting to convince a women’s Christian group that biological absorption was possible within three generations.⁶¹ He held that “the aborigines

⁵⁸ *Aborigines Act (QUL) 1934*, sec. 9 and 11.

⁵⁹ A.O. Neville, Western Australia, 1937 Aboriginal Welfare Conference, 14-16.

⁶⁰ Austin, *Never Trust a Government Man*, 96.

⁶¹ He showed the now well-known photo of three generations of racial mixing, the third generation and final product purportedly showing no Aboriginal physical features. He also wrote a treatise of his policy views. See A. O. Neville, *Australia’s Coloured Minority: Its Place in the Community* (Sydney: Currawong Pub. Co., 1947).

have intermarried with our people. I know of some 80 white men who are married to native women, with whom they are living happy, contented lives, so I see no objection to the ultimate absorption into our own race of the whole of the existing Australian native race.”⁶² There were, perhaps, few options for a state where the demographics did not favour ignoring the problem – as had also been the case in Victoria.

Marriage

Far less difficult to regulate than sexual unions were marriages, already licensed under state law. However, it was never entirely clear what administrators were trying to accomplish in doing so – that is, if they were attempting to slow miscegenation, or encourage it to accelerate biological absorption. The 1905 Western Australia act regulated marriage by including the clause that “no marriage of a female Aboriginal with any person other than an Aboriginal shall be celebrated without permission, in writing, of the Chief Protector.”⁶³ But their powers extended beyond that: “In practice, no permission is granted for a white or a half-caste to marry an aboriginal woman. Half-caste males and, where possible, Europeans, are encouraged to marry half-caste girls. Half-caste girls are encouraged to marry whites approved by the Chief Protector. The question of whether the Government will pursue the policy of encouraging half-caste women to marry whites is at present receiving consideration.”⁶⁴ The actual application of the law reflected the attitudes of officials in ways that were not as accessible in the wording of the law itself: the racial hierarchy dictated marriage consent.

⁶² A.O. Neville, Western Australia, 1937 Aboriginal Welfare Conference, 16.

⁶³ *Aborigines Act* (WA), 1905, sec. 42.

⁶⁴ NLA Chinnery Manuscript, “Aboriginals. Commonwealth Government’s Policy in Respect of the Northern Territory,” MS766 [n.d. c.1939].

And not everyone agreed that biological absorption through marriage was the key to assimilation. At the 1937 Commonwealth Conference, Queensland's Mr. McLean argued that his state was opposed to the marriage of mixed-ancestry females to white men for three reasons:

(1) None but the lowest type of white man will be willing to marry a half-caste girl, and as the half-caste women married by the white men are likely to gravitate to aboriginal associations such marriages have very little chance of being successful. (2) there is the danger of blood transmission or "throw back", as it is called, especially as the introduced blood, as in many Latin races, has already a taint of white blood; (3) such a scheme makes no provision for other wives of young men of the same breed.⁶⁵

His concern about 'throw back' was a reflection of the precarious balance of what proponents of biological absorption saw between white and Aboriginal blood: without the 'right' formula, the eventual biological absorption predicted by some would fail. In reality, few actually believed the scientific claims of the day that any visible sign of Aboriginal ancestry would disappear in three generations. Furthermore, officials found such unions difficult to fathom. In South Australia, at least one administrator did not think it likely that white men would want to marry a mixed-ancestry woman, especially if given the choice. He opined that "no white men, if white women are available, will marry a half-caste aboriginal."⁶⁶ Myth or fact, the attitudes towards mixed marriages were evident.⁶⁷

Only three states, Western Australia, Queensland, and the Northern Territory actually incorporated marriage regulation into law, but many others practiced the policy nonetheless.⁶⁸ In Victoria, for instance, there was no legislation to regulate marriage, yet officials did so anyway. According to historian Katherine Ellinghaus, marriages were regulated by controlling residence on stations. She argues, "when the BPA had the power to remove people from their families and

⁶⁵ J.W. Bleakley, 1937 Aboriginal Welfare Conference, 28.

⁶⁶ SA Protection Report 1912, 47.

⁶⁷ This is especially true of Canadian historiography which often cites the lack of white women in early colonial periods as the reason why European men chose to marry Aboriginal women, suggesting that it was the lack of choice that justified what would otherwise be considered undesirable unions.

⁶⁸ Ellinghaus, "Regulating Koori Marriages."

homes and force them into a racist community without any financial support, legal power to prevent marriages was hardly necessary.”⁶⁹ With or without that legal power, no consistency would be practiced. While some officials granted licenses only in rare circumstances, others, like the Northern Territory’s Chief Protector, Spencer, granted them liberally, especially in cases where the union was long standing or had already produced children.⁷⁰ More significantly, as Dr. Morris noted at the 1937 commonwealth conference, “you cannot stop them from having babies even if they don’t marry.”⁷¹

Finally, in the 1930s, official policy supported the promotion of ‘racial’ integration: mixed marriages were encouraged, in stark contrast to a previous policy that prohibited interracial unions.⁷² This change might have, in part, been attributable to a countervailing belief that persons of mixed descent were better suited for the Australian climate. It was also likely part of a process of elimination: by this point, other attempts to ‘civilize’ Aboriginal Australia had clearly failed. It was also obvious that any attempt to control interracial sexual relations was futile. This shift in policy, then, seems to be more a shift in tactic than in actual thought. Consistently, official policy had attempted assimilation by targeting mixed-blood populations.

Race and Labour

Labour as a site of interracial contact also became an area to be regulated. In contrast to Canada and the US, labour played a significant role in Australian Aboriginal policy. Labour contracts, legislated by protection acts in most states, defined the terms of employment for individuals considered Aboriginal under the law. In Australia, Aboriginal people could not be

⁶⁹ Ibid., 24.

⁷⁰ Austin, *Never Trust a Government Man*, 40.

⁷¹ 1937 Aboriginal Welfare Conference, 14-16.

⁷² Anthony Moran, “White Australia, Settler Nationalism and Aboriginal Assimilation,” *Australian Journal of Politics & History* 51, no. 2 (June 1, 2005): 168–193.

employed unless the permission of the protector was granted and a labour contract negotiated. The state then supervised, regulated, and controlled Aboriginal labour in Australia. Purportedly, this was for the protection of Aboriginal people; but in reality, it was often to prevent unmarried men of European descent from acquiring female Aboriginal labourers.⁷³ The regulation of Aboriginal labour thus afforded the opportunity for officials to reject potential employers that might make contributions toward that growing 'mixed-race' Aboriginal population officials were so concerned about. Consequently, labour played an important role in governments' policies towards 'mixed-race' Aboriginal people.⁷⁴

Clearly, the primary concern for government officials was that unsupervised interracial interactions meant opportunities for interracial mixing. In fact, this is where much of it occurred. Protectors in almost all states commented frequently about the number of girls hired out as domestic labour returning pregnant or with babies. A Victoria official commented on this problem in 1882:

The hiring out of the half-castes is a matter that has been frequently under the consideration of the Board. The difficulty (with regard to females) is not in finding people who would undertake to employ them, but in finding those who would also hold themselves responsible to the Board for their well-being, moral and physical... I think it is a very dangerous thing that half-caste girls should be allowed to go out into service, as we have to receive them back with babies.⁷⁵

Even though the labour of Aboriginal females was regulated, then, it still resulted in what were from the department's view unwanted pregnancies. However, Aboriginal people constituted a much-needed labour source for the sparsely populated new Australia. Young women of mixed

⁷³ NLA Chinnery Manuscript, "Aboriginals. Commonwealth Government's Policy in Respect of the Northern Territory," MS766 [n.d. c.1939].

⁷⁴ Ann McGrath's history of Aboriginal labour on cattle stations also suggests that they were sites of interracial relations. McGrath, *Born in the Cattle*.

⁷⁵ Victoria. "Remarks of the Board for the Protection of the Aborigines... and Report upon the Condition and Management of the Coranderrk Aboriginal Station," 1882.

ancestry were the preferable choice for domestic labour in white Australian homes, so the labour needs of the country, then, contrasted the racial morality of its citizens.⁷⁶

Exemption

The policy of exemption worked in concert with legal definitions of Aboriginal peoples and highlighted the inherent contradictions of those definitions. Under this policy, eligible applicants were exempted from the terms of the protection act. Exemption, not dissimilar from policies of enfranchisement and allotment in Canada and the US, purported to grant full citizenship rights to certain individuals who met criteria, after which they would no longer be subject to the terms of Aboriginal legislation, such as the Protection acts that most states had. Like most policies of this nature, it had a dual nature: on the one hand, it lifted certain legal restrictions from individuals, allowing them the freedoms that were accorded to citizens. But on the other hand, it ‘de-Indianized’ them and forced them to sever ties to their Aboriginal communities, resulting in what were sometimes detrimental consequences for their cultural identities.⁷⁷ While the exemption policy was indeed a process of legal elimination and paternalistic control, as has frequently been argued,⁷⁸ it also demonstrates the ambiguous nature of racial identification, and the ambivalence officials felt about ‘mixed-race’ Aboriginal people.

⁷⁶ Victoria Haskins also argues that domestic labour was an unpopular choice for white women. See, Victoria Haskins, “On the Doorstep: Aboriginal Domestic Service as a ‘Contact Zone,’” *Australian Feminist Studies* 16, no. 34 (March 2001): 13–25.

⁷⁷ See for instance, Judi Wickes, “‘Never Really Heard of It’: The Certificate of Exemption and Lost Identity,” in *Indigenous Biography and Autobiography*, ed. Peter Read, Frances Peters-Little, and Anna Haebich (Canberra: The Australian National University, 2008).

⁷⁸ See for instance, Katherine Ellinghaus, “Strategies of Elimination: ‘Exempted’ Aborigines, ‘Competent’ Indians, and Twentieth-Century Assimilation Policies in Australia and the United States,” *Journal of the Canadian Historical Association* 18, no. 2 (2007): 202–225; David Huggonson, “Aboriginal Trust Accounts in Queensland: How ‘Protection’ Became ‘Oppression,’” *The Australian Quarterly* 62, no. 4 (1990): 366.

Most states administered an exemption program.⁷⁹ Queensland was the first to enact such a clause in its 1897 protection act, granting authority to the Minister to issue a certificate of exemption to any ‘half-caste’ he deemed eligible. Western Australia followed suit in 1905, though exemptions could be granted to Aboriginals as well as ‘half-castes. South Australia’s 1911 act provided a similar clause, though it, too, allowed Aboriginals to receive an exemption. The terms there extended to those fully employed who did not reside on the reserve, and to females who were married to a non-Aboriginal.⁸⁰ As Austin has argued, it was more difficult for mixed-race women from the Northern Territory working in South Australia, who had to apply for exemption. They were singled out as in need of full protection, even beyond their transition into adulthood, because of the stereotypes associated with mixed-race Aboriginal women, particularly in regard to their ability to handle money or their sexual behaviour. As Austin further explains, “in an age in which State girls were considered, by virtue of the background from which they came, to be at greater moral risk than the rest of their age cohort, ‘Half-caste’ girls were considered too low even to warrant the same treatment as State children.”⁸¹ Exemptions for female ‘half-castes’ in the Northern Territory became even more difficult after 1931 when Cecil Cook, a particularly paternalistic bureaucrat, became Chief Protector.⁸² It became increasingly difficult to receive exemption, and as discussed earlier, some Aboriginal people chose to leave the state, in which case the act would no longer apply to them.

In the first years of the exemption policy, there appeared to be little direct impact, at least in terms of its intended effect. Few exemptions were initially granted.⁸³ But by the late 1930s, officials in several states made a more aggressive effort at increasing the number of exemptions

⁷⁹ Only Victoria and Tasmania did not administer an exemption program.

⁸⁰ *The Aborigines Act (SA)*, 1911, sec. 19.

⁸¹ Austin, “A Chance to Be Decent,” 61.

⁸² *Ibid.*, 63.

⁸³ For Western Australia, see Haebich, *For Their Own Good*, 163–165.

– a process which would reduce the Aboriginal population through legal de-Indianization. Several states amended their acts to broaden the policy. For example, in 1936, Western Australia expanded its exemption clause to include terms of revoking the certificate. In 1939, South Australia did the same, while also greatly expanding its clause on exemption certificates, focusing on the inclusion of criteria such as “intelligence” and “character” – a policy that paralleled Canada’s own enfranchisement policy. That same year, Queensland amended its exemption clause to include Aboriginals, not just ‘half-castes,’ and power to revoke the certificate. This was also the period when New South Wales implemented its own exemption policies.

This policy, then, could vary from state to state, but generally, the terms were similar in nature if not wording. All states required applicants to demonstrate some degree of ‘civilization,’ which might be proved through education, employment, or lifestyle. Additionally, they all also required the applicant to sever his or her ties with Aboriginal family and friends, and by consequence, could not continue living on a reserve or camp. It was eligibility that varied. Some states accepted only ‘half-caste’ applicants, while others considered Aboriginals as well.

As became typical for Australia, policy was not always followed by practice. Officials frequently displayed ambivalence toward the policy and the implementation or application of these criteria. For instance, the policy of a woman taking on her husband’s status was not adhered to. An example in Western Australia demonstrates this. Alred Eudes, of Aboriginal descent, applied for an exemption. The Chief Protector did not require him, as a ‘quadroon’ to receive exemption since, under the law, he was not considered Aboriginal. Yet, his ‘half-caste’ wife was considered Aboriginal under the law, and so was required to apply for exemption.⁸⁴

⁸⁴ R. Cornwell, Commissioner of Police to Deputy Chief Protector of Aborigines, 7 January 1924. SRO WA, 1326 item 1923/2670.

Thus, there was a discrepancy between the state's legal-racial designations on the one hand and how individuals were actually treated on the other.

Another significant way in which the exemption policy demonstrated ambivalence towards 'mixed-race' Aboriginal people was in its reasoning – or lack thereof – for rejection. One of the more common considerations was the purchase of alcohol. Those designated legally as 'Aboriginal' were prohibited from purchasing alcohol. This prohibition became increasingly contentious especially as 'mixed-race' Aboriginal people moved into towns and cities and joined the labour force. For instance, one 1912 application for exemption by a 'half-caste' was denied because the Chief Protector believed the exemption "would undoubtedly be abused in the direction of supplying Aborigines with liquor, which would be against the public peace, and a source of annoyance to many Europeans living in the vicinity where natives are camped."⁸⁵ The 'half-castes' who applied for these exemptions were understandably offended. As their protests indicated, they associated the freedom to purchase alcohol and have a drink at the local establishment after work as part of the male workforce culture and a sign of their acceptance into mainstream society. To be denied this right was not only a violation of their rights of citizenship, but it was emasculating: these individuals were ultimately denied participation in their workforce culture. Nonetheless, officials were highly concerned that 'mixed-race' Aboriginal people would purchase alcohol, either for themselves or for Aboriginals in camps or stations. Alcohol was closely associated with what officials perceived as immorality, of which racial mixing was also a part. Thus, the connections between alcohol, morality, sexuality, and racial mixing comprised a matrix of reasoning, illogical as it may have been, in regard to policy and how officials made decisions about 'half-caste' identity. However, no one seemed to notice that 'mixed-race'

⁸⁵ Chief Protector of Aborigines, 5 March 1912, to Under Secretary, Colonial Secretary's department. SRO WA 651 File 95/12.

Aboriginal people applying for exemption were expected to live up to moral standards that exceeded that of their white counterparts – a situation not dissimilar from Canada’s enfranchisement policy.

Another situation in the Northern Territory demonstrated continuing ambivalence. Three Alice Springs half-castes who had all served in the Army Labour Corps during World War II had applied for exemptions and were denied. Again, the reasoning was the purchase and consumption of alcohol. The Director of Native Affairs felt that “It was not fair to subject them to temptations above their level.”⁸⁶ That is, even though ‘half-castes’ were considered eligible to contribute to the war efforts of their country, they were not deemed capable enough to handle a drink with their comrades. This was in part an extension of concerns about Alice Springs, and what was seen as its ‘moral demise’ due to the number of ‘unseemly half-castes’ there. The large presence of ‘mixed-race’ Aboriginal people itself was considered problematic; but the combination of that with drinking and gambling made it intolerable from the government’s viewpoint. It was recommended by the director that these three be moved away from Alice Springs to a more northern location. In short, the Director of Native Affairs recommended segregation as a means of dealing with the so-called ‘native problem.’

Yet another example from the Northern Territory demonstrates the policy’s continuing ambiguity, particularly how its actions contradicted its stated goal of assimilation. In 1938, Mrs. Reid requested exemption from the act. While she had previously been married to an Aboriginal man, she had since left him. She was living in a common law relationship with another man – not Aboriginal – and had two children by him. C.E. Cook, then Director of Native Affairs, denied her application on the grounds that she “is not of sufficient standard of education or social

⁸⁶ G. Sweeney, Director of Native Affairs, Western Australia, to the Administrator, 26 October 1942. NLA Chinnery Manuscript, MS 766, Box 20, series 8, folder 28.

conduct to merit exemption. Her request can have no other motive than to legalise her present relationship with Crombie [her common law husband]. It seems that the application is being pressed, not so much for the freedom of Mrs. Reid as for the immunity of Crombie.”⁸⁷ Mrs. Reid had, according to the Northern Territory Administration, been released from the Half-Caste institution “on the condition that she did not cohabit with Crombie, who had previously been convicted for this offence.”⁸⁸ So, even though the claimed goal was racial integration, and Mrs. Reid was doing precisely that, she was prohibited from doing so. Their relationship remained a criminal one, and her partner, subject to prosecution.

Protests did not just come from men wanting to get a drink after work. A group of women in Broome, Western Australia, still held to be Aboriginal under the act, requested their exemption on the grounds that they worked for and lived as whites. They also argued that their marriage prospects were limited by their legal status, which had the effect of deterring non-Aboriginal suitors. But mostly, they asked for their freedom – the freedom that any other citizen in their position enjoyed – so they could “rule our lives and make ourselves true and good citizens.”⁸⁹ Neville refused to deal with their complaints, citing the limitations of the law as his excuse, but did suggest that the forthcoming amendment might alter their position. Whether or not these women ever received exemption is not indicated by the surviving record, but even in 1935, when the petition was addressed, officials did in fact have the authority to do so. The 1905 act contained an exemption clause, and the residency clause in its definition rendered the women non-Aboriginal. But, as discussed earlier, Broome was considered one of the ‘problem’ centres

⁸⁷ C.E. Cook, Chief Protector of Aboriginals, to the Administrator, Northern Territory, 6 March 1938. National Archives of Australia (NAA) Series A1, 1938/6142.

⁸⁸ C.L.A. Abott, Administrator, Northern Territory, to Secretary, Department of the Interior, Canberra, 12 May 1938. NAA Series A1, 1938/6142.

⁸⁹ SRO WA, file 55/35. Re: petition by half-castes and quadroons in Broome regarding exempting them from the Aborigines Act.

in Australia, where immorality and debauchery, unchecked, resulted in the further increase of a ‘mixed-race’ Aboriginal population – much to the chagrin of government officials. This is perhaps why Neville refused their petition in 1935.

Success and failure are difficult to discern in relation to this policy. Like elsewhere, Aboriginal people in Australia rejected the exemption policy by simply refusing to apply. It was both demeaning and difficult, and for many, not worth the effort. However, the social burden of discrimination forced some Aboriginal people to use exemption as an escape from the tutelage of the act, particularly for those who had situated themselves in towns and cities, or those who had or were searching for jobs.⁹⁰ For those who did apply, the legacy of exemption has resulted in what Judi Wickes calls the “erasure of Indigenous cultural identity” as generations of people lived with the long-term effects, especially the disassociation from Aboriginal kinship and Country.⁹¹ But, more significantly for the purpose here, it was an ambiguous policy, and despite the differences in state law, this was a feature they all shared. As one Western Australian official explained, exemption was for “Natives who have reached a state of civilization equivalent to whites,” yet true equality was rarely accorded.⁹² Individuals of Aboriginal descent continued to be considered Aboriginal, even if they did not live in an Aboriginal community or as Aboriginal people in a cultural sense. Thus, the contrast between social and legal perspectives produced a void for Aboriginal people who did not fit the imagined racial dichotomy of the colonized world. What became apparent in twentieth-century Australia was that government officials were uncomfortable with facilitating the full and complete absorption of Aboriginal people into

⁹⁰ In South Australia, a 1941 memo noted that 200 exemptions had been successfully made in that state. Memo, November 11, 1941, NAA A884 A605. In Queensland, on the other hand, 4092 exemptions were granted between 1908 and 1968. See Wickes, “‘Never Really Heard of It’.

⁹¹ *Ibid.*, 86.

⁹² F.H. Rowe, Director-General, Department of Social Services, Perth, to Director-General, Department of Social Services, Canberra, 24 May 1943. NAA Series A884, A605.

mainstream society. Even more to the point, they were uncomfortable with relinquishing legal control over the lives of those individuals.

Most significantly, exemption did not work because of the refusal of Aboriginal people to participate. Again and again, officials in various states found that Aboriginal people were unwilling to sever ties with their relations and ancestral lands, or 'Country. Ultimately, exemption was part of a larger policy that sought to better define the division between Aboriginals and 'half-castes,' and especially to define the powers of officials over 'half-castes' who might otherwise be excluded. The impetus arose when government officials debated the inherent problems in a policy that either restricted assimilation or failed to prohibit certain undesirable activity, like purchasing alcohol. Policy thus sought to provide enough legal power over 'half-castes' to administer them when and if they lived as Aboriginals, while also granting them the freedom to release 'half-castes' from legislative control when and if they lived as whites. Since officials were ambivalent about that division, law needed to have a built-in flexibility but remain internally coherent and logical. It also needed to validate the actions that officials wanted to take. Exemption policies thus granted officials full liberties to control the lives of 'mixed-race' Aboriginal people as they saw fit.

By the 1940s, the concept of exemption was gradually giving way to that of citizenship. A discourse of rights and citizenship was gradually replacing that of assimilation and segregation, and in the post-WWII climate, even government officials were becoming aware of the problems of keeping Aboriginal people under such paternalistic legal status. However, this did little to change their attitudes: officials still overwhelmingly believed in the idea of race and the merits of assimilation. Only the rhetoric changed. This was evidenced by Western Australia's 1944 Native Citizenship Act, which sought to grant full citizenship rights to Aboriginal people.

The act proved to be little more than its predecessor of exemption: Aboriginal people still had to apply for it, and meet criteria similar to those laid out for exemption, in this case, to demonstrate they possessed “the manner and habits of civilised life.”⁹³

Shifting Ideas

Between the 1940s and 1960s, Aboriginal Affairs throughout Australia underwent major change. As the policy of assimilation gave way to a post-World War II climate of social equality, states altered and even repealed the protection acts which had fathered those policies. Aboriginal Affairs officials, then, were not seriously interested in assimilating Aboriginal people until after the 1940s. Until then, and quite consistently, officials professed to be interested in assimilating ‘half-castes. In reality, though, officials could never really get behind this idea: Aboriginal people, even those with a low blood quantum, were still Aboriginal, and resistance to racial integration by a country dedicated to a ‘white’ policy trumped department plans or pragmatic considerations. Integrating them into society defied racial thinking and came up against attitudes that sought to maintain a boundary between black and white, but yet refused to accept them as ‘real’ Aboriginals.

By the mid-twentieth century, ideas about Aboriginal people began to change in a number of ways. Slowly officials were acknowledging the problems of racial theories, particularly in terms of racial superiority. They were also realizing the role of broader public attitudes about Aboriginal people, and the implications of racial discrimination for social and economic conditions.⁹⁴ Officials distinguished less and less often between Aboriginals and half-castes, focusing instead on shared socio-economic problems and rights of citizenship and

⁹³ *Native Citizenship Act* (WA), 1944.

⁹⁴ Western Australia. “Report of the Special Committee on Native Matters (With particular reference to adequate finance),” 1958.

equality. Social integration, with or without biological integration, was increasingly seen as the solution in a post-WWII era that forced the world to acknowledge the effects of racism and the socio-economic disparity it produced. This would become the new policy for all Aboriginal people of any degree of quantum.

The policy of assimilation thus became fast-tracked by its redefinition as social integration. While officials focused less on involving themselves in that process, they accelerated it by ‘de-Indianizing’ Indigenous peoples through law and policy. In Victoria, for instance, stations and reserves were closed, leaving the Aboriginal population to relocate, often to urban areas, and search out jobs in the unskilled labour market.⁹⁵ As one member noted of New South Wales in 1943,

I am afraid we have reached the stage at which gradually the aboriginals will have to be accepted into the normal life of the community. Their blood is thinning out, generation after generation they are becoming more nearly white, and I think that not many years hence the aborigines will have to be absorbed into the community as a whole. In view of the mistakes that have been made in the past in not segregating them, I believe that is the only destiny to which they can look forward.⁹⁶

The 1951 Commonwealth conference confirmed as much: to most administrators, most Aboriginal people were of mixed descent, a point they considered meaningful, and thus, the only solution was a uniform policy of social integration for all.

Conclusion

While the 1937 Native Welfare Conference was seen as a turning point in Aboriginal policy, in reality it simply represented the collective acknowledgement of contradictory policies that had already been in operation since the 1880s. The attendees made a commitment to the integration of mixed-ancestry Aboriginal people, in contrast with a policy of continued

⁹⁵ PROV, VPRS B313/1, Item 3.

⁹⁶ New South Wales, *Parliamentary Debates*, 1942-43. Mr. Vincent, Raleigh, 1623, 11 March 1943.

segregation for those Aboriginal people considered 'full blood. The resolution only gave the appearance of commitment, though. Despite differences among state approaches to a commonly perceived 'half-caste' problem, collectively, individual state policies demonstrated a number of common features that suggested the same ambiguity and ambivalence towards 'mixed-race' Aboriginal people. The rule had been to assimilate 'half-castes' and segregate those Aboriginal people considered 'full blood. However, conflicting sentiments of humanitarian concerns and anti-miscegenation ensured neither was effectively pursued. Instead, Aboriginal people, and especially those of mixed ancestry, were the subjects of ambivalent but exclusionary measures.

Even though Australian officials stated their racist and anti-miscegenetic attitudes more openly, they were just as ambivalent and ambiguous about Aboriginal people of mixed ancestry as were officials in Canada and the US. Policies and laws that might be considered more restrictive, paternalistic, or even genocidal still reflected the uncertainties about race and racial mixing that late nineteenth- and early twentieth-century scientific theories propagated. Despite the practice, the same ideologies lurked beneath the surface as they did in Canada and the US. Aboriginal people of mixed ancestry provided a key impetus to the development and creation of Aboriginal policies throughout Australia. The drive to eliminate racial ambiguity was, indeed, a central factor in that process.

Chapter 7 - A Transnational Mixed-Race Discourse

In examining Aboriginal policy with an eye to mixed-ancestry Natives, the ways in which these otherwise very different policies in very different countries overlap becomes apparent. In Canada, the US, and Australia, mixed-ancestry Natives produced ambiguity and ambivalence, and officials struggled to find a place for them in law and policy, and indeed, in their own personal paradigms shaped by nineteenth-century racial thinking. From a ‘western’ perspective, all of the varied and various peoples that had encountered each other over centuries of western colonialism could (or should) be understood in terms of clear-cut and immutable categories.¹ That much was clear. But the implications when those categories overlapped, mixed, blurred, and intersected were not.

Over what was a relatively long period of time, law and policy in all three of these countries persistently and manifestly demonstrated ambiguity and ambivalence toward mixed-ancestry Natives. The government officials who created and animated these laws and policies demonstrated ambiguity and ambivalence in applying them, too. They oscillated between defining mixed-ancestry Natives as Aboriginal and non-Aboriginal, and between employing policies of assimilation and segregation. Individual government officials vehemently debated these choices, and rarely, if ever, came to a consensus. But within this ambiguity and ambivalence lies one important consistency: government officials and even the public at large were uncertain about where mixed-ancestry Natives belonged. This uncertainty persists among the three countries under consideration here, over almost a century of law and policy.

¹ The idea of ‘the west’ and a ‘western perspective’ is a shifting, historically unstable concept. Here, it is meant to represent a dominant, albeit contested, attitude about ‘non-western’ peoples, including Indigenous peoples, that was based in widely accepted ideas about human difference. For a discussion on the many versions of ‘the west,’ see Alastair Bonnett, *The Idea of the West: Politics, Culture and History* (New York: Palgrave Macmillan, 2004); and Martin W. Lewis and Kären E. Wigen, *The Myth of Continents: A Critique of Metageography* (Berkeley: University of California Press, 1997).

Shifting Terrains of Mixed Race

There is a clear correlation between what was happening in these laws and policies and what was happening in scientific debates at the end of the nineteenth century. As discussed in Chapter Three, scientists debated the merits and possibilities of racial mixing in an attempt to answer key questions about race and biology, particularly questions about species which hinged on fertility and origins. In short, two races that produced fertile offspring would be considered the same species, and if all races were the same species, then it followed that all humans had the same origin. The government officials who created and administered Aboriginal policies cared less for the finer points of science and religion, but the broader questions about the feasibility and desirability of racial mixing were significantly considered and debated. Questions about whether or not races should mix, and what the long-term implications were, proved to be quite significant to Aboriginal policy. At any rate, mixing produced uncertainty. The desire to eliminate racial ambiguity was simply a matter of attempting to reconcile a faulty worldview based on race with the reality of hybridity.

In all three countries, concerns about racial mixing arose around the same time. In Canada, the gradual rise was evidenced in pre-Indian Act legislation that slowly but gradually eliminated mixed-ancestry Natives from its definition of “Indian.” Beginning in 1850, a series of legislative changes, all of which revolved around mixed ancestry, increasingly limited legal identity, either directly or indirectly. These provisions first established authority to define who was and was not Aboriginal, then eliminated mixed-ancestry Natives by parentage, and finally, excluded women who married non-Aboriginals.² Simultaneously, the changing attitudes about racial mixing were reflected in changing treaty policy: what started out with an absence of

² Contrary to this clause, the 1876 Indian Act allowed non-Aboriginal women to take on status when they married Indian men. This demonstrates the confused ways in which status intersected with race and gender. But in both cases, mixed-ancestry Native children took on the status of their fathers.

regulations or concerns for membership gradually came to exclude mixed-ancestry Natives from the terms of treaties. Finally, scrip reflected the uncertainty over the boundary between ‘Indian’ and ‘Halfbreed’. Commissioners and Indian Agents struggled over how to draw that boundary when faced with the prospect of allowing treaty Indians to change their status to scrip Halfbreeds. Nothing more was required than to claim white ancestry, which could provide no indication of one’s cultural affiliation. In this case, much as with Australia’s exemption certificate and the US’s competency status, determining ‘race’ was a matter of determining a supposed degree of civilization and ability to support oneself.

In the US, there was a similar but even more distinguishable rise in concern about racial mixing with the limits of tribal authority over membership. Pre-1871 policy reflected a tradition that respected and observed tribal authority over membership, even if that membership was of mixed ancestry. There was a marked shift in how government agents discussed racial mixing in the late eighteenth and early nineteenth centuries during the treaty era compared to how they discussed it after the middle of the nineteenth century in the allotment era. They expressed little or no objection to mixed-ancestry Natives as tribal members during early years; but after the 1850s, concerns increased, and eventually, officials came to object to mixed-ancestry Natives being considered Native American. However, these objections were accompanied by ambivalence: as elsewhere, the official categorization of mixed-ancestry Natives remained ambiguous as policy officials, tribal authorities, and court judges debated their status. It was only with the passage of the 1934 act that any consistency was brought to Indian Affairs policy in the form of a uniform blood quantum.

For Australia, the shift in policy and attitudes towards mixed-ancestry Natives was less discernible initially, mainly because there was little if any formal policy prior to 1850 – and in

fact, little settlement or contact prior to 1850 – that would provide the same point of comparison. Regardless, post-1850 policies unmistakably reflected scientific theories about race and racial mixing. Early legislation already demonstrated concerns about racial mixing, though concerted efforts to prevent ‘miscegenation’ were still decades away. The first of the protection acts, starting with Victoria’s 1869 Aborigines Protection Act, sought to clarify a difference between Aboriginal and ‘half-caste’ as legal definitions, but were unable to achieve this. Continuing ambiguity towards mixed-ancestry Natives despite stated goals of assimilation made practice and policy incompatible in all but a few select areas where Aboriginal populations constituted small minorities among a growing settler population. But in other states where the Aboriginal population was more significant, especially Queensland, the Northern Territory, and Western Australia, a growing mixed-ancestry Native population caused alarm among officials and a public who feared they would take over, at least demographically. Goals of assimilation were thwarted by policies of anti-miscegenation, where laws essentially prohibited sexual relations between Aboriginals and whites. This inherent tension was reflected in confused, ambivalent, and even contradictory distinctions between ‘Aboriginal’ and ‘half-caste’ in law, and in ambiguous attempts in practice.

Thus, there is evidence in all three countries that shifting ideas about race and science infiltrated Aboriginal law and policy around the 1850s. Ideas and debates about race and racial mixing among scientists, especially those in Britain and the US, would instigate significant changes in policies specifically directed at mixed-ancestry Natives. These ideas, which came out of the post-Enlightenment scientific developments, found scientists debating the merits, viability, and desirability of racial mixing throughout the colonial world. As noted in Chapter Three, by 1850 most of the western world adhered to the taxonomic philosophy of human difference that

was defined by categories of 'race. Racial mixing defied this worldview, and indeed, threatened to undermine the entire science of racial categorization. Conversely, it was also a necessary contradiction. As Robert J.C. Young best states it, "the idea of race here shows itself to be profoundly dialectical: it only works when defined against potential intermixture, which also threatens to undo its calculations altogether."³ Fundamentally, racial mixing both disproved theories of race and perpetuated them.

What happened from roughly the 1880s on would substantiate this point. Officials in all three countries became increasingly concerned and even anxious over the presence of mixed-ancestry Natives among Aboriginals and increasingly uncertain about what to do with them. Questions plagued policy makers: Were mixed-ancestry Natives Aboriginal? Should they be assimilated or segregated? Would this population continue to increase, or would it disappear into either the Aboriginal or mainstream population? If governments had legal and humanitarian obligations to Aboriginal populations, then what were their obligations to mixed-ancestry Natives? At what point did these obligations end, if they even did exist? What role would blood quantum play in this decision? These were questions that applied to policy in Canada, the US, and Australia as officials attempted to negotiate the inherent contradictions of policies fundamentally based on flawed ideas of race.

The inability of officials to adequately answer these questions was ultimately reflected in the ambiguity and ambivalence of policies towards mixed-ancestry Natives. Increasing concerns about racial purity began with a marked shift in policies where mixed-ancestry Natives were targeted in more specific and aggressive ways, often for exclusion from legal recognition as Aboriginal peoples. In Canada, this targeting was reflected in definitions in the Indian Act as well as those generated by the scrip commissions. Mixed-ancestry Natives were increasingly

³ Young, *Colonial Desire*, 19.

excluded from the category of status Indian, a trend that lasted for a century, and laws found new ways of exclusion, such as through marriage to a non-Aboriginal. This meant that, automatically, the mixed-ancestry children who were produced by these unions were not considered Aboriginal under law. This was also the case for the thousands of former treaty Indians who were withdrawn (or voluntarily withdrew) to take scrip: they, too, would no longer be considered Aboriginal in the eyes of the state. Scrip was not, then, the government's recognition of a unique class of Indians, even if it was intended to clear the Aboriginal title from Métis lands. Rather, it had the added effect of fast-tracking the assimilation of mixed-ancestry Natives. It was especially the definitions worked out between 1885 and 1887 in the Northwest Half-Breed Commission that lent themselves to this process.

Around the same time in the US, the onset of the allotment policy in 1887 marked a major shift in policy towards mixed-ancestry Natives. The challenges in determining eligibility for allotment during this period, as exemplified among the Chippewa, Osage, and Five Tribes, reflected struggles to come to terms with a population that defied the compartmentalized thinking of nineteenth-century racial ideas. The eventual implementation of 'competency,' a certificate that was similar in intent and effect to Australia's exemption and Canada's enfranchisement policies, did little to clarify that ever-elusive line between citizens and Native Americans. Instead, it further reflected the ambivalence and ambiguity toward those mixed-ancestry Natives who were applying for allotment – or having it forced upon them, as the case might have been.

In Australia, protection acts, many of which began in the 1880s and 1890s, and their specific clauses reflected this driving concern in a number of ways. Not least among these was the confusing and impossible attempts to define Aboriginals and 'half-castes' separately. These

attempts were matched only by the futile efforts to control miscegenation through the regulation of marriage, sexual activity, and labour, all of which were exercises in segregation. This was in stark contrast to the country's purported goal of assimilation, especially for mixed-ancestry Natives, which would be achieved through programs of education and civilization, not dissimilar from residential schools in Canada and the US. Domestic and low-skill labour training was part of this program, and would eventually find mixed-ancestry Natives contracted out to work in mainstream society, either in individual homes or in Australian industry such as ranching and pearling. Ironically, these industries would provide sites for further racial mixing, placing officials in a quandary: to meet the labour demands of a new Australia, to respond to humanitarian concerns to 'protect' Aboriginals, or to assimilate Aboriginals, especially mixed-ancestry Natives, into mainstream society.

The Rise of Ambiguity: Comparisons

Law and policy reflected this uncertainty about racial mixing and the uncertainty felt toward mixed-ancestry Natives, but how that ambiguity and ambivalence played out in these three countries was surprisingly similar, in concept if not in actual letter. This point is evidenced by the contrast within the laws and policies respectively executed in each of these three countries. In terms of their specific structures, legal definitions, clauses, and wording, the laws and policies in Canada, the US, and Australia were quite different from one another. While there are specific points at which we can find similarity – such as treaty policies in Canada and the US, legal definitions in Canada's Indian Act and Australia's protection acts, or marriage regulation in the US and Australia – as a whole, these direct comparisons are rare. Governments did not approach policy in the same way, because they were different governments attempting to administer different Aboriginal populations in different national and regional contexts. However,

the same underlying ideologies informed and shaped them. Accordingly, some of the consequences were similar.

One of the similarities that emerges from a study of Aboriginal policy in all three of the countries under consideration here is that assimilation policies were contradictory. This can be seen in the competing goals of assimilation and segregation – opposing goals which were often applied simultaneously. This was most evident in Australia, where legislation explicitly attempted to encompass both goals. Assimilation was encouraged through labour and even in some cases, intermarriage; yet anti-miscegenetic attitudes created opposing policies through the control of Aboriginal females. Policies in the US and Canada also demonstrated this contradiction, though typically more evident between the stated goal and the practiced one. Both countries claimed assimilation as their ultimate goal, yet both continued segregationist practices. The most evident of such practices was with the codification of Aboriginal identity: it maintained, solidified, and made permanent racially ascribed differences among culture groups – what Amselle observes as ‘ethnographic reason.’⁴ Federal governments claimed that their goals were the assimilation of Indigenous peoples into mainstream population, yet they consistently applied practices that ensured the failure of such policies.

The second and related aspect that becomes apparent here is that mixed-ancestry Natives were often at the center of this contradiction between segregation and assimilation. There was little question as to how to solve the ‘Aboriginal problem,’ or how to classify individuals identified as such. But in each and every case, there was serious debate over the role that mixed-ancestry Natives could and should occupy. Examples can be seen in a number of policy initiatives, but the most poignant include debates over legal definitions in Australian protection acts; in the US, by eligibility for allotment; and in Canada, in eligibility for scrip. Each one of

⁴ Amselle, *Mestizo Logics*, 154.

these debates also signified questions about both ‘problems’ and ‘solutions’: should mixed-ancestry Natives, too, be segregated, or assimilated? Did they need to be ‘civilized,’ or were they already so by virtue of their white blood? Could they serve as a conduit to civilization for Aboriginal people, or would they be a degrading element like the infamous ‘unscrupulous whites’ from whom governments already had to ‘protect’ Aboriginal peoples? Were they eligible for lands allotted under Aboriginal policies, or independent citizens? The definitions of mixed-ancestry Natives in these policies were ambiguous; thus, so were eligibility and government obligation. These questions and others revolving around individuals of mixed ancestry plagued government officials for decades between the end of the nineteenth and beginning of the twentieth centuries.

These questions spoke directly to the debates about racial mixing scientists were having at the time. Scientists who pursued questions about race, hybridity, and species were really pursuing questions about human difference. While some stand out as particularly derogatory, most were attempted serious lines of inquiry – even if the hypotheses they developed were not all that logical. Nonetheless, the uncertainty expressed by government officials about mixed-ancestry Natives originated in the kinds of questions upon which those scientists were basing their inquiries. What were the biological differences and similarities between races? How much did phenotype dictate character? What were the implications of racial mixing? Their answers were just as varied as those from policy makers, but it was especially the latter one that plagued Aboriginal policy and became the source of its ambiguity. Some scientists, such as James Prichard, believed there was no harm in mixing, while others, like Robert Knox, posited that

racial mixing was a ‘degradation of humanity.’⁵ There were more who posited themselves somewhere between extremes, arguing that some mixing could and should occur, though only between select races. These hypotheses typically consisted of the argument that ‘proximate’ races, that is, those who were similar, could mix without consequence, but distant races, like blacks and whites, could not. The absence of any consensus on the matter made the information a confusing array of contradictions to non-scientists, like government officials, who were trying to navigate their own debates.

Another significant similarity was that the presence of mixed-ancestry Natives was identified or framed in all three countries as a problem. How this was expressed varied from country to country, but the ‘Native problem’ administrators frequently spoke of often included mixed-ancestry Natives. In Australia, it was a problem of miscegenation and morality, a social problem that intersected acceptable behaviour pertaining to sex, alcohol, and marriage. Frequent comments from government officials suggested the ‘moral affront’ that racial mixing posed, what Professor Cleland had dubbed “a very unfortunate situation” when he spoke at the 1937 Native Welfare conference in Canberra.⁶ Officials worried that this problem would only grow and spread – perhaps even take over – as mixed-ancestry Native populations grew. In the US, the problem was one of citizenship and landownership. Who would be deemed an American citizen to whom rights and privileges, such as individual ownership of land, would be accorded was dependent upon an individual’s racial constitution. Those with enough ‘white blood’ would be assimilated into the folds of American society, while those with too much Aboriginal blood would remain segregated in tribal communities. Allotment provided such an avenue, and

⁵ James Cowles Prichard, *The Natural History of Man* (London: H. Bailliers, 1855); Robert Knox, *The Races of Men: A Philosophical Enquiry Into the Influence of Race Over the Destinies of Nations* (London: H. Renshaw, 1862).

⁶ Professor J.B. Cleland, 1937 Aboriginal Welfare Conference, 10.

competency provided the test, especially for those tribal members who were “nearly all white,” as the Oregon agent had commented in 1885. And finally, in Canada, the problem was one couched in terms of the government’s legal obligation and the expenses that went along with that. The actions of Indian Affairs represented fiscal concerns more than social or moral obligations, and the Department’s relationship with Aboriginal peoples had as much to do with fulfilling legal requirements, like extinguishing title, as set out by earlier British precedent. Decisions about how to proceed with policy were premised by these considerations. Where both legal and financial obligation could be extinguished, it was done, and the formal relationship between the federal government and Aboriginal peoples ended. The scrip policy, especially after 1885, accomplished these goals. Either way, in all three countries, these so-called problems were framed around mixed-ancestry Natives.

But those who were posited as ‘problems’ already had their own way of establishing their identities, and they rarely coincided with those views expressed by government officials. Indeed, in each of the three countries, there was a clash between how Aboriginal people constituted their identities and how officials attempted to constitute their identities. These differences were evident in every situation where governments imposed legal definitions on Aboriginal people, but the application of those definitions on individuals of mixed ancestry served to highlight the problem. In cases in Canada, the US, and Australia, Aboriginal groups demonstrated that race was not a major defining feature of membership, if it was relevant at all.⁷ They contested the ways in which administrators categorized them, and they protested when those categories did not correlate with their own systems of identity. They sometimes did so in overt and public ways, as

⁷ There are exceptions, especially in historical cases where a western idea of race has infiltrated Indigenous kinship systems, as Fay Yarbrough, among others, argues was the case among the Cherokee. Fay A Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2008). Biological ideas of race continue to shape Indigenous memberships today, including the three countries discussed here.

Kohpay did in 1910 in front of the House of Representatives hearing, or in passive ways, such as Aboriginal people in Australia did by camping on the fringes of reserves when they were expelled. While we have much to learn about Aboriginal systems of membership, kinship, and identity-construction, even this cursory look into the issue exposes a number of patterns. They all suggest that government attempts to impose identity were contested.

In essence, each of these countries experienced similar patterns of policy change in a flow that would reflect the rise and fall of racial mixing as a major impetus for policy direction. They expressed these ideas in different ways, with different policies, but with similar intentions and goals: to eliminate racial ambiguity. In this, they were all unsuccessful. Indeed, this dissertation is as much about the failure of policy as it is a critical analysis of it. Each of these countries invested time, money, and energy in a program of assimilation to which they could only half-heartedly commit. They all maintained a persistent belief in the merits of the policy, but individuals only occasionally demonstrated any serious commitment to them. Academics and government officials themselves cited economy and time as the reasons the policy failed. Undoubtedly, these explanations are valid and true. However, they do not explain the underlying ideological and intellectual reasons for failure.

The Imagined and the Real: Orientalism and Hybridity

It is in turning to postcolonial theory that we can develop an understanding of the more mundane ways in which colonialism was acted out on a daily basis – an understanding that might otherwise not be evident. The empirical evidence here suggests two important points that mirror postcolonial theory: first, that colonizers imagined populations as racial binaries, analogous to Said's theory of 'orientalism'; and second, that populations were in reality ambivalent and ambiguous, not unlike Bhabha's conceptual framework of hybridity. The relationship between

these two seemingly opposite conceptual frameworks offers a potential explanation for the contradictions of policy when taken together. On the one hand, the actions and attempts of policy makers and other government officials to fit mixed-ancestry Natives into one of two perceived immutable racial categories reflects the ‘us/them’ binary posited by Said’s ‘orientalism. On the other hand, the reality of hybrid spaces reflects Bhabha’s ‘hybridity. In the case of Aboriginal policy, officials’ attempts to place mixed-ancestry Natives into the imagined racial binary failed because of the reality of hybridity. The idea of ‘mixed’ cannot exist without a pre-existing belief in categories, but categories cannot be accurately applied to that which is ‘mixed.’

Said’s orientalism helps explain the concept of racial categories and the premise of Aboriginal policies in these three countries when considering the role of mixed-ancestry Natives. Said examined the dichotomy produced by colonialism as well as how it was an imagined function of colonialism. As discussed in Chapter Three, he suggests that colonialism is premised on polarizing populations into binaries: oriental/occidental; us/them; or colonizer/colonized. But these binaries are based in ‘imagined’ difference. That is, they do not reflect the reality of colonialism but rather serve as a justification for continuing inequality and the subjugation of the colonized.

Mixed-ancestry Natives posed a dilemma for the belief in a racial binary. Mixing blurs the boundary between colonizer and colonized, and thus, challenges the beliefs upon which race was propagated. What confused this binary was, of course, the very existence of mixed-ancestry Natives. They defied the entire idea of categories, and thus produced ambivalent actions and policies. The empirical evidence parallels this theoretical construct. In Canada, this dilemma emerged during the scrip policy, where the boundary between “Indian” and “Halfbreed,” and thus, eligibility for scrip, was blurred by administrators’ confusion over qualifying criteria. In

Australia, the challenges of legal definitions found in most protection acts reflected the uncertainty officials felt about how to classify mixed-ancestry Natives. In the US, it was allotment that posed the greatest challenge, where decisions about eligibility were inconsistent, and sometimes even conflicted with the courts' interpretations of who was Native American. The challenges of maintaining the idea of categories in a hybridized world were very real.

Indeed, these examples demonstrate that the attempts of colonizers to place mixed-ancestry Natives into one of two racial categories – a racial binary that is a reflection of what Said has called Orientalism – fails, and it fails because strict racial categories do not work on hybridized populations. Certainly, much has been said about the inherent fallacy of racial categorization, and racial mixing has, as discussed above, demonstrated that. Indeed, it is the inherent contradiction of race that it cannot be sustained. Bhabha's work on hybridity, and especially his rejection of primordial identities helps us understand this fundamental contradiction, and the consequent failure.

Bhabha's conceptual framework of hybridity includes three key concepts relevant to the question of racial mixing in colonialism: ambivalence, mimicry, and periphery. Ambivalence, a recurring theme in his work, situates itself in stark contrast to the dualism of Said's orientalism. It posits that strict binaries do not exist, whether they be in consideration of culture, identity, power, or any other way in which the actors of colonialism might intermingle, mix, or meet. There are a number of differing interpretations of this particular concept, but for the purposes here, it is best understood as the oscillation between acceptance and rejection, assimilation and segregation, or likeness and difference.⁸ And in terms of the ways in which law and policy have

⁸ This interpretation is most apparent in his essay, "Of Mimicry and Man: the Ambivalence of Colonial Discourse," Bhabha, *The Location of Culture*, 121–131.

targeted mixed-ancestry Natives, it can be understood as the failure to define or re-interpret the identities of those individuals.

Ambivalence ties in closely with the second concept here: mimicry. According to Bhabha, mimicry has multiple facets that consider the ways in which both colonizers and colonized attempt to replicate themselves in colonial settings. What is of particular relevance here, though, concerns the failure of the colonized to redefine the colonized in their own image. Colonization claims assimilation as its underlying goal, but it ultimately fails in achieving this claimed end.⁹ This is not only a failure on the part of the colonizers, but also on the part of the colonized. This failure is the result of both the ambiguous actions of the colonizer, as well as the resistance of the colonized – that same half-hearted commitment evidenced by the actions of policy makers. What results, then, is not a clear, one-sided power relationship; but rather, a continually negotiated and unstable power dynamic. Mimicry also helps to explain the ambivalence of colonizers: they hesitate to fully implement assimilation because even mixed-ancestry Natives remain perpetually ambiguous, or, in Bhabha's words, "not quite/not white."¹⁰

Finally, Bhabha uses 'periphery' to describe the position of colonial actors. He suggests that there is a dialogical relationship between the centre and the periphery, whereby the centre is continually re-defining itself in opposition to the periphery. The 'centre/periphery' analogy applies here in two important ways: in terms of authenticity and impurity, and in terms of 'Aboriginal' and 'mixed Native. 'Centre' can be likened with 'authenticity' in opposition to 'hybridity. Notions about racial purity were central to the constitution of racial categories, and the idea of 'authentic' Indians. They were also juxtaposed by the 'impurity' that racial mixing

⁹ Bhabha's definition of 'mimicry' shifts throughout his essays, collectively published in *The Location of Culture*. Here, I use it mainly as he discussed it in his essay, "Of Mimicry and Man: the Ambivalence of Colonial Discourse," Bhabha, *The Location of Culture*. For an analysis of these shifting definitions, see Robert Young, *White Mythologies: Writing History and the West*, 2nd ed. (London: Routledge, 2004), 186–192.

¹⁰ Bhabha, "Of Mimicry and Man," *The Location of Culture*, 131.

resulted in. But ‘purity’ can exist only in relation to ‘impurity. Racial hybridity thus defines racial purity: mixed race defines race. Thus, mixed-ancestry Natives assume a critical role in colonialism, in defining both ‘racial purity,’ and in defining ‘Aboriginality. This puts hybridity in a determinant role in colonialism. It becomes the thing to define all else against.

Thus, ambivalence, mimicry, and periphery work in concert here to help develop a more nuanced understanding of the role of mixed-ancestry Natives in Aboriginal policy in Canada, the US, and Australia. Together, they suggest that the roles of those who are ‘mixed’ are central to colonialism, including its laws and policies that are formulated for the purposes of distinguishing the Aboriginal population from the dominant one. They are the counterpart in a corresponding relationship. They also collectively suggest that the ambivalence and ambiguity evidenced by the practices of Aboriginal affairs officials are an expected consequence of colonialism, and that the contradictions that seem a typical part of administration and bureaucracy, anomalous to logic and reason, are in fact typical of a colonialism that is interwoven with the idea of race. There is rarely a question of who is white and who is Aboriginal; but there is usually a question of where mixed-ancestry Natives belong. And on this point, officials were ambivalent and ambiguous. They oscillated between segregating and assimilating mixed-ancestry Natives and other individuals who were culturally or racially ambiguous.

Critical theory has long been accused of coming up short on reality. Critics condemn its focus on ‘representation’ and in “neglecting the material conditions of colonial rule,”¹¹ suggesting that theorists forgo an acknowledgement of the realities of colonialism and its legacy for an analysis of its symbolic value. However, as this dissertation demonstrates, representation and reality are not always that distinct. As Ania Loomba explains it,

¹¹ Ania Loomba, *Colonialism-Postcolonialism* (London: Routledge, 1998), 84.

It has become commonplace to reject the empiricist divisions between something called ‘the real’ and something else called ‘the ideological,’ and of course the two cannot be bifurcated in any neat fashion. But it is important to keep thinking about the overlaps as well as the distinctions between social and literary texts, and to remind ourselves that discourse is not simply another word for representation. Rather, discourse analysis involves examining the social and historical conditions within which specific representations are generated.¹²

In fact, the representation is acted out in the reality: the ideas and meaning behind colonial rule emerged in its practice through laws and policies. But colonialism is not just acted out in the fictitious or ‘representative’ texts studied by literary critics: it is also acted out in the so-called factual ones that constitute archival records and legislative precedent left by our colonial predecessors. As Said himself says, “this evidence is found just as prominently in the so-called truthful text (histories, philological analyses, political treatises) as in the avowedly artistic (i.e., openly imaginative) text.”¹³ Discourse, and more pointedly, its analysis, then, is not just something that happens ‘out there. It has as much to do with the realities of colonialism as do more seemingly pragmatic concerns like money, power, and land ownership.¹⁴ Thus, explanation emerges from the place where theory meets evidence.

The ‘idea vs. reality’ debate, and in fact, a premise upon which this dissertation’s argument is based, can be found in Said’s definition of ‘orientalism’ itself. Said argues that the ‘Oriental’ is both an idea and a reality. He explains:

It would be wrong to conclude that the Orient was *essentially* an idea, or a creation with no corresponding reality... There were – and are – cultures and nations whose location is in the East, and their lives, histories, and customs have a brute reality obviously greater than anything that could be said about them in the West.¹⁵

¹² Ibid., 85.

¹³ Said, *Orientalism*, 21.

¹⁴ This division might also be explained by the two camps of explaining the role of race. The first, led mainly by Karl Marx, argues that race is a tool of economic power. Colonialism is thus an extension of capitalism. The second, derived from Max Weber, sees race as a social process created to control power and status. See Loomba, *Colonialism-Postcolonialism*, 107–108; John Stone, “Race, ethnicity, and the Weberian legacy,” *American Behavioral Scientist* 38, no. 3 (January 1995): 391–406.

¹⁵ Said, *Orientalism*, 5.

Orientalism, then, is how colonizers imagine and thus create the colonized, but it is also who the colonized themselves think they are. Aboriginal people exist independently of colonialism, and prior to it; yet there also exists what is imagined or invented about them: the stereotypes, the imposed legal identities.

In effect, the 'Oriental' as imagined speaks directly to the meaning behind the emphasis on mixed-ancestry Natives that has been uncovered here. The attempt to impose a social structure that is built upon a racial binary is evident in all three countries under consideration here. The 'imagined' racial binary has been applied in very real ways, executed in laws and policy that have had very real effects on Aboriginal people. In terms of how Aboriginal people could be classified according to the state, there were two options: Aboriginal or regular citizen. These were not options that always corresponded with Aboriginal systems, which were mostly based on kinship relations, not 'blood. But rarely were these systems accorded any credibility, particularly after the mid-nineteenth century. Instead, colonialism introduced and enforced notions of identity that reflected the binary exposed by Said. This imagined binary was set into practice in all three countries through the question of whether or not Aboriginal laws and policies were applicable to certain individuals.

As readers of critical theory will already know, the ideas and concepts advanced by both Said and Bhabha are infinitely more complex than indicated here. The point is not to offer a full treatment of either, as has already been done. Rather, the point is to demonstrate how their ideas might be applied in more practical ways to empirical problems that might appear otherwise unsolvable. They help find meaning where there might appear to be none, as is the case with the inherent ambiguity of colonialism, as expressed in laws and policies in Canada, the US, and Australia.

Conclusion

There is, I believe, much to be learned from the parallels between theory and empirical evidence, and in comparing the three countries considered here. First, the emphasis on mixed-ancestry Natives witnessed in all three countries suggests that there is more to the history of Aboriginal policy than we have previously acknowledged. Specifically, the widely accepted conclusion that the goal of Aboriginal policy was assimilation must be questioned and contested. In fact, there were times at which the actions and words of policy officials, and sometimes even the letter of the law, demonstrated that segregation of Aboriginal populations was just as sought after a goal as assimilation. Also in fact, the ambiguity, ambivalence, uncertainty, and sometimes even contradictory behaviour of officials were not simply the consequence of typical bureaucracy. They were the consequences of ambiguity, ambivalence, uncertainty, and sometimes even contradictory behaviour of the scientists studying race and speculating on the merits, consequences, and implications of racial mixing. The influence of nineteenth-century racial scientists on Aboriginal policy are perhaps more intricate than might be generally acknowledged.

Second, the mixed-race discourse uncovered here suggests that the elimination of racial ambiguity, and the uncertainty felt towards mixed-ancestry Natives were also major driving forces of Aboriginal policy. Historiography has previously given credit to fiscal considerations, humanitarian considerations, public demands, goals of nation-building, and other pragmatic considerations in the direction and determination of Aboriginal policy. Undoubtedly, all of these factors played a significant role in the development and execution of Aboriginal policy. But this should not be taken to the exclusion of ideological and intellectual factors that prove just as influential to Aboriginal policy as these more pragmatic ones. While the intent here is not to dispute these conclusions, I do contend that there is something more. I contend that this is as

much a matter of epistemology and the desire to uphold beliefs, even in the face of contradictory evidence and illogical action. I contend that policy administrators (people) and not states (institutions) develop and maintain this system in order to maintain their worldview – a worldview based in part on the contributions of nineteenth-century science.

Third, the time frame clearly suggests that the reactions to mixed-ancestry Natives and how they were dealt with in law and policy reflected the developments in racial science in the nineteenth century. The rise of debates over racial mixing in the larger genre of racial science during the nineteenth century directly coincided with the rise of concerns over racial mixing as reflected in Aboriginal law and policy in Canada, the US, and Australia. This period was marked by key publications in ideas about racial mixing, especially Knox's *Races of Men* and Darwin's *On the Origin of Species*, and by the rise of specific debates regarding the implications of racial mixing. Significantly, it was debates over the possibility of racial mixing, the fertility of those of mixed race, and the moral consequences of mixing that informed Aboriginal law and policy in these three countries.

If we re-examine what we thought were such well-known and understood Aboriginal policies in the light of mixed-race discourse, we find a different picture. That the goal of Aboriginal policy was assimilation of Natives into mainstream society never entirely made sense. But, looking at policy through the lens of critical mixed race theory, we can see that a second, simultaneous but conflicting, goal might more readily be described as the elimination of racial ambiguity – a goal quite different from assimilation, and one which explains the contradictions of Aboriginal policy – how it always seemed to fail at the very thing to which it claimed to be dedicated. Aboriginal policy is ambiguous, and that ambiguity means something. The idea of race fails as the practice of race. The inherent contradictions of Aboriginal policy

exemplify this, and this becomes evident when we re-examine otherwise well-known policies by focusing specifically on how laws and policies targeted Aboriginals of mixed ancestry.

Chapter 8 - After Race

The historical question of whether or not mixed-ancestry Natives should be treated as Aboriginals for the purposes of law and policy remains relevant today. Indeed, everywhere there is a legacy of an Aboriginal policy that has usurped power of membership and citizenship, Aboriginal people continue to pay the price as federal recognition interferes with cultural definitions. Policy administrators have been slow to change definitions or criteria to align with changes in racial thinking. Instead, the mixed-race discourse of the nineteenth century continues to be found in the twenty-first. The targeting, the racialization, and the de-Indianization of mixed-ancestry Natives was not a unique feature of any one particular country, and cannot be explained by its unique historical evolution, its legal traditions, or even the agency of individuals within those systems. Instead, these processes can only be understood as an institution of colonialism – part of the system that spread across the world.

This particular aspect of colonialism might matter less if we did not continue to live with the legacy of the racial thinking that targeted mixed-ancestry Natives. We still live with the racialized logic of the nineteenth century, repeatedly evidenced in the requirement for mixed-ancestry Natives to prove who they are to the courts, to Aboriginal departments and other officials, and to the larger public in general who still hold to ideas of “real Indians.” The paradigms of colonialism underpin the very laws and policies that are, to varying degrees, still in place. These laws and policies continue to inform identity, direct access to resources, and define rights. They also continue to undermine the basic and most fundamental aspect of Aboriginal self-determination: identity and membership. There is no decolonization without an understanding of this process.

What legal spaces, then, do law and policy create or deny? How do they expand or limit spaces within which mixed-ancestry Natives can form distinct communities? This is where the three countries most visibly depart. And this is where national differences manifest themselves most. These three countries offer a kind of spectrum of conditions that have the potential to affect identity formation in similar colonial contexts

Three Scenarios of Modern Mixed-race Identity

In Canada, the Métis form a distinct collective – socially, culturally, and legally. The Métis are well-known as distinct Aboriginal communities of mixed ancestry origins whose identities formed over a long period of time as a result of the specific conditions of Canada’s fur trade. While the Métis existed as distinct communities before law or policy identified and targeted them, law and policy have worked in concert, though perhaps unwittingly, to create a space for Métis identities to be codified and fixed. The conditions of treaties, the Indian Act, and scrip have collectively achieved this. While treaties and the Indian Act specifically excluded the Métis and Halfbreeds as ‘Indians,’ they included them under scrip. In a way, law brought mixed-ancestry Natives under one policy. There was, then, a formal space created for Aboriginals who were excluded from other policies because of their mixed ancestry. And while scrip, as the records indicated, might have been intended to make “ordinary citizens” of them, not a distinct legal group of Aboriginals, it set a legal precedent whereby the Aboriginal rights of Métis and Halfbreeds were recognized and confirmed in law, even if through extinguishing them. However, there remains a larger population stuck between the formal definitions of Métis and Indian that remain unrecognized.

In the U.S., mixed-ancestry Natives have been more readily accepted as members of tribal entities, although that changed over time. There is no recognition for those who identify as

Métis, but there is recognition for those who belong to federally recognized tribes.¹ Indeed, this is the most significant contrast to the history of Canadian law and policy: that is, the *inclusion* of mixed-ancestry Natives. While Aboriginal leaders in Canada were denied their requests to include the “Halfbreed cousins” in treaties, this was not the case in the US where officials granted those requests to Native American leaders, whether those mixed-ancestry Natives were individuals or groups. And until the allotment policy began in 1887, mixed-ancestry Natives were not excluded from being considered Native American by any other federal law or policy. Even after that point, mixed-ancestry Natives were not targeted in the same way for exclusion unless and until the tribe came under the allotment policy. However, the implications of the application of a stricter blood quantum in 1934 changed that policy. Twentieth-century policies of dislocation, urbanization, and ‘citizenship’ disenfranchised Native Americans from their tribal communities in new and multiple ways.

Australia presents yet another scenario, perhaps even more complex than in Canada or the US. No distinct mixed-ancestry identity exists, at least officially. In urban areas, there is an indication that communities formed among individuals who have been separated by choice or force from traditional communities. In rural areas, evidence suggests the formation of ‘fringe’ communities around Aboriginal stations and reserves. But we know little about these processes. Widespread policies separated individuals from their families and communities in two significant ways, leaving countless Aboriginal individuals separated from their own histories and identities. First, mixed-race individuals were excluded from the legal category of “Aborigine,” meaning that they were not allowed to reside on the reserves, stations, and other communities with their kin groups. Second, individuals of mixed race were sent to schools or institutions, then hired out

¹ Camie Augustus, “Montana Metis: Literature Review, History and Historiography,” in Denis P. Combet, Lise Gaboury-Diallo, and Denis Gagnon, *Histoires Et Identités Métisses: Hommage À Gabriel Dumont* (Winnipeg: Presses Universitaires de Saint-Boniface, 2009).

to white families in non-Aboriginal communities. Consequently, many individuals of mixed race were absorbed by the labour industry or by the towns and cities. These processes of exclusion left two potential spaces for congregation and the consequent formation of an identity, but geographical and socio-cultural factors inhibited both. Those individuals absorbed into modes of labour, such as cattle stations or pearling, did not amass the numbers necessary to form such a collective. Their relative isolation and small numbers meant the conditions for congregation simply did not exist. This separation is exacerbated by internal politics within the larger Aboriginal community that can sometimes divide individuals by ancestry or descent – soft words for what are continuing notions of ‘blood quantum’ and notions of racial purity. The internalization of such racialized identities is one of the legacies of colonialism, for certain. But for the purposes of access to rights, programs, or institutions designated specifically for Aboriginal people, individuals of mixed-ancestry are not distinguished from other Aboriginals. This comes despite Australia’s long history of singling out Aboriginals of mixed ancestry in law. How law and policy contributed to these situations, to their diverse outcomes, becomes a question of import, then.

Mixed Race meets the Courts

While governments have approached these issues of race and identity with hesitancy, apathy, and (unsurprisingly) ambiguity, courts have been more decisive. Indeed, they are at this very moment working out definitions of Aboriginal in all three countries, and contemplating the role of race, genealogy, and descent in those definitions. If there is hope for a ‘raceless’ future, it is perhaps to be found there.

In 2003, the Supreme Court of Canada handed down the now well-known Powley decision. This decision was a long-awaited clarification of Métis Aboriginal rights, as designated

in the 1982 Constitution, and of Métis legal identity. Consequently, the case has since had a resounding impact. Undoubtedly, the Powley case is considered such a success because it confirmed Métis rights under law by defining and clarifying the ambiguities of their constitutional entrenchment. What is less clear is how this more recent decision in law reflects the much longer historical relationship between the Métis and the Canadian state, and between people of mixed ancestry and the Canadian state. This case does, indeed, have a historical context, but it is one that is often overshadowed by the seeming importance of the constitution as the source of Métis rights. A Métis legal identity was not born in 2003 with that court decision, nor was it even born in the 1982 constitution. It has a long history that begins in 1850. And that history has little in common with what the historic relationship between Métis and Canadian law says.

A more recent decision by Canada's Federal Court in *Daniels*, immediately appealed by the Crown, has offered even more promise for a 'raceless' future. The judge ruled that Métis and non-status Indians, many of whom are of mixed ancestry, do indeed fall under the jurisdiction of section 91(24) of the Constitution Act. In other words, they are constitutionally considered "Indians." In his summary judgement, the judge noted that

Degrees of "blood purity" have generally disappeared as a criterion; as it must in a modern setting. Racial or blood purity laws have a discordance in Canada reflective of other places and times when such blood criterion lead to horrific events (Germany 1933-1945 and South Africa's apartheid as examples). These are but two examples of why Canadian law does not emphasize this blood/racial purity concept.²

He is wrong in one respect: the Indian Act still uses degrees of blood to decide status, even if it is disguised in the language of 'descent.' Nonetheless, the mere official acknowledgement by a federal court judge that 'blood purity' is an outdated concept is encouraging. And given that Canada has now taken the direction that all major Aboriginal policy questions will be decided by

² *Daniels* [FCC], 2013. Para. 119.

the courts, as it seems unwilling or unable to acknowledge the extent of its obligation and fiduciary duty on its own, then the words of one federal court judge are indeed significant.

What makes this case significant is its decision about mixed-ancestry Natives and their official status. The judge ultimately ruled that the federal government intended to include peoples of mixed ancestry (both Métis and non-status Indians) in the definition of “Indian” under Canada’s original 1867 constitution – a decision which places them squarely under federal jurisdiction, despite that government’s insistence for decades that only ‘status Indians’ were federally recognized Indians. But, as the history of legal identity in Canada has demonstrated, this was perhaps never entirely clear. As the judge noted from the extensive documentation and expert testimony, “there was, for administrative purposes, a very unclear or indistinct line between Indians and half-breeds.”³ The courts in Canada have, then, acknowledged that the practices of Indian Affairs officials were ambiguous.

Australian courts have also spoken on the issue of ‘race,’ though they have not come to the same conclusions. Since 1981, the Commonwealth Aboriginal Affairs department has used a three-part definition for Aboriginal, not dissimilar to that developed by Canadian courts. It includes descent, self-identification, and community acceptance.⁴ While self-identification and community acceptance have been easier to sustain, descent has been contested and debated in the courts.⁵ In a 1989 Queensland case, the court created the test of aboriginality according to

³ Ibid., Para. 524

⁴ Australian Law Reform Commission, “Essentially Yours: The Protection of Human Genetic Information in Australia”: 914-915, accessed 16 January 2013 http://www.alrc.gov.au/publications/36-kinship-and-identity/legal-definitions-aboriginality#_ftnref16.

⁵ The ALRC in “Essentially Yours” claims that there have been only a few cases to discuss this point. See *Attorney-General (Cth) v Queensland* (1990) 94 ALR 515; *Gibbs v Capewell* (1995) 128 ALR 577; *Shaw v Wolf* (1998) 163 ALR 205. See also *In the Matter of the Aboriginal Lands Act 1995 and In the Matter of Marianne Watson (No 2)* (Unreported, Supreme Court of Tasmania, Cox CJ, 27 August 2001). The following analysis draws on a discussion in an unpublished paper: L de Plevitz and L Croft, *Proving Aboriginality: Legal and Genetic Constructs of Aboriginal Descent* (2002) unpublished.

descent.⁶ It defined this descent as “genetic,” faulty, as one legal academic points out, since “Though science can show a person is descended from particular ancestors it cannot prove that that descent is Aboriginal.”⁷ A 1984 Tasmanian case, *Tasmania v Commonwealth* continued to define Aboriginality in terms of race as a biologically determined and visible trait.⁸ However, Justice Deane defined Aboriginality as “a person of Aboriginal descent, albeit mixed, who identifies himself as such and who is recognised by the Aboriginal community as an Aboriginal.”⁹ A 1990 Queensland case ruled that a higher blood quantum, made evident by a person’s appearance or documentation, could serve to stand alone as proof of Aboriginality – that is, without self-identification or community acceptance. A lower blood quantum, on the other hand, would require additional support or information, such as self-identification, community acceptance, *and* genealogical proof. Feasibly, then, the courts had at least introduced acceptance of mixed-ancestry Natives as Aboriginal even if they held fast to a biological idea of race.

Other cases have suggested that Australia is moving away from biological definitions of Aboriginality. While the 1992 Mabo case laid down a biological component of Aboriginality, it has not always been interpreted as such. For instance, in 1999, a Tasmanian case found a different sentiment in its ruling. Justice Merkel stated in his decision that, “In truth, the notion of ‘some’ descent is a technical rather than a real criterion for identity, which after all in this day and age, is accepted as a social, rather than a genetic, construct.”¹⁰ Another case in 2002 in

⁶ 1989 Queensland v Wyvill (1989) 90 ALR.

⁷ Loretta de Plevitz and Larry Croft, “Aboriginality Under the Microscope: The Biological Descent Test in Australian Law,” *Queensland University of Technology Law and Justice Journal* 3 (2003): 2.

⁸ *Tasmania v Commonwealth* (1984) 158 CLR.

⁹ *Ibid.*

¹⁰ *Shaw v Wolf* (1999) 163 ALR 205, 268.

Western Australia held that in determining Aboriginality for the purposes of proving title, the relationship to the land was more important than strict biological descent.¹¹

More than Canada or Australia, the US has a history of using courts to determine racial status and tribal authority. This history dates back to the 1830 Georgia rulings, discussed earlier in this dissertation. In more recent years, courts have separated Native American legal identities into ‘political’ and ‘racial. This was the result of a 1974 ruling whereby BIA employees challenged the constitutionality of a preferential hiring practice that privileged Native Americans. The court ruled that Native American was a political category, not a racial one, defined by membership in a tribal (political) entity. While the courts claim domain over the political identities, then, they do not over the cultural. Instead of positing Native Americans as racialized individuals, the courts now look at identity in terms of membership in a political entity. By resituating the ‘tribe’ as a ‘political entity,’ US law has circumvented the issue of race. Though this decision may have initially protected Indigenous people, it may potentially undermine decolonization efforts by excluding mixed-ancestry Natives who are not tribal members.¹²

In the meantime, the BIA continues to designate Indigeneity based on blood quantum, as confirmed in a ‘Certificate of Indian Blood’ issued to an individual upon documented proof of Aboriginal lineage. An even larger problem is how the federal blood quantum criterion affects tribal membership conditions.¹³ Since a tribe’s access to certain government programs is dictated

¹¹ *Western Australia v Ward; Attorney-General (NT) v Ward; Ningarmara v Northern Territory* [2002] HCA 28 [Unreported, Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ, 8 August 2002], accessed 20 February 2013, <<http://www.austlii>. This part of the Federal Court’s decision on the meaning of biological descent was not discussed at its appeal to the High Court.

¹² Rose Cuison Villazor, “Blood Quantum Land Laws and the Race Versus Political Identity Dilemma,” *California Law Review* 96, no. 3 (June 2008): 801–837.

¹³ Thornton concludes that 2/3s of the 317 federally recognized tribes use some form of blood quantum in their membership code. Russell Thornton, “Tribal Membership Requirements and the Demography of ‘old’ and ‘new’ Native Americans,” *Population Research and Policy Review* 16, no. 1–2 (April 1, 1997): 33–42.

by the BIA's approval of their membership code, many tribes see the inclusion of a blood quantum criterion as necessary. This has caused considerable debate among Indigenous peoples concerning membership and identity. As Eva Maria Garrouette explains it, "failure to negotiate an identity as a "real" Indian within the legal definition of one's tribe can lead to some dire outcomes for individual people."¹⁴ In part, the question of 'legitimate' identities is a reflection of internalized colonialism. But it is also a safeguard against misappropriations, especially for tribes who profit from business or resource extraction.¹⁵ Thus, tribes are caught between possible misappropriation and exclusion by race.

These cases, of course, have an impact on the shaping of contemporary policy in these countries, and are in many ways redefining what 'mixed-race' means. What they show is that race as biology is on the decline, or at least that courts acknowledge the problems. However, they also demonstrate a continuing ambivalence: there is still evident hesitancy to completely abandon the idea of race in exchange for culture – a concept that would likely require definitions to be solely determined by Aboriginal peoples themselves. Race and especially ideas of 'mixed race' continue to influence and shape our contemporary understandings of what it means to be Aboriginal: who gets official recognition, whose rights are protected, and who gets to be a member of officially recognized tribes or bands. Historic constructions of race through mixed race inform and define contemporary constructions of race through mixed race. Albeit to lesser and varying degrees, the persistent myth of racial purity continues to inform identity and recognition.

¹⁴ Eva Marie Garrouette, "The Racial Formation of American Indians: Negotiating Legitimate Identities Within Tribal and Federal Law," *American Indian Quarterly* 25, no. 2 (April 2001): 226.

¹⁵ See M. Neath, "American Indian Gaming Enterprises and Tribal Membership: Race, Exclusivity, and a Perilous Future," *University of Chicago Law School Roundtable*, vol. 2, 689–709, 1995.

People define their own identities according to internal factors. But they do so within the limits of external ones. Law is one such limit. It imposed (and continues to impose) an order onto groups that perhaps do not define them, but does at least confine them. It creates or denies spaces in which groups might grow, develop, merge, separate, or otherwise form. There is no question that law does not create culture, but there is a question about its role in the persistence, growth, or change in culture. In all three of the countries under consideration here, law has been a shaping factor in the formation, limitation, and the expansion of these identities.

Note on Sources

While this dissertation relies primarily on government documents, the records which were most useful varies for each country. I searched a number of collections, both government publications and archival holdings, between 1850 and 1950. I paid particularly close attention to Aboriginal-specific legislation and annual reports of Aboriginal departments, both of which provided a focus to research that was broad and expansive. I also examined government debates, archival holdings (primarily of Aboriginal departments), and government correspondence, but the results were sporadic. There were other peripheral documents that were instrumental in interpreting the meaning behind legislation, and especially, definitions of Aboriginal legal identities. These peripheral documents are what varied most from country to country.

In Canada, the three areas of policy that played an important role in the determination of mixed-ancestry Native legal identity meant that there were a greater number of collections of value. Legislation was, on its own, useful in ascertaining a specific mixed-ancestry Native discourse, but the archival record produced little in determining the impetus behind clauses that dealt specifically with mixed-ancestry Natives or racial mixing. Reports from Indian agents provided more clues in that regard, and other aspects of Aboriginal policy, namely scrip and treaties, provided a context for understanding legislative clauses. For the scrip policy, there is an extensive collection of correspondence which is revealing in terms of a mixed-race discourse. Like most government documents, it privileges officials' views, but some of the motivations behind the actions of those individuals who applied for scrip can be gleaned from the record. For treaties, Alexander Morris' published reports provided a record of discussions, brief as they may have been, about the eligibility of mixed-ancestry Natives to participate in the treaty process and about how Aboriginal people themselves saw their role in that process. Thus, there was more diversity in the types of documents used for Canada.

In the US, congressional documents, particularly hearings and committee reports, were the most telling in terms of mixed-ancestry Natives. Legislation in the US rarely provided a definition of ‘Indian,’ and where it did, there was no consistency. Furthermore, government correspondence rarely explained how eligibility would be determined. Discussions about racial mixing were surprisingly absent in the records of Indian agents, and even the annual report of Indian Affairs provided little information. However, the American system of using hearings as a way to clarify any issues in the application of laws and policies provides a record of discussions regarding mixed-ancestry Natives, as was especially the case for allotment hearings. In addition, a few key publications, namely, Charles J. Kappler’s *Indian Affairs: Laws and Treaties* and Felix S. Cohen’s *Handbook of Federal Indian Law* were both instrumental in this research. The text of treaties, as in Canada, provided the pre-1850 context, and both allowed me to review all the legislation relevant to Native Americans quickly and efficiently – not otherwise possible, given its size. Overall, the American records provided more information about the views of Aboriginal people themselves than did those of Canada and Australia. The hearings were especially useful in this regard.

In Australia, legislation, protection reports, and commissioned reports provided most of the evidence. Australian officials tended to be more explicit in their opinions about racial mixing and more concerned about it; consequently, there is far more evidence. Legislation frequently included lengthy definitions for both ‘Aboriginals’ and ‘half-castes. Thus, the text of legislation was revealing on its own. Both government correspondence and protection reports provided context to this legislation and specific examples that revealed the impetus for legislative changes. Furthermore, the many commissioned reports at the state level, some of which were dedicated solely to the ‘half-caste problem’ blatantly revealed government officials’ attitudes about racial

mixing. In stark contrast to Canadian and American records, Aboriginal perspectives are far more difficult to discern in Australia. However, a stronger tradition of autobiographical accounts written or told by Aboriginal people themselves has helped compensate here.

Ultimately, these records, different as they might be, revealed a common pattern of discourse about mixed-ancestry Natives. When viewed over the long term – here, approximately 1850 to 1950 – they suggested a continuity in attitudes about mixed-ancestry Natives, even amidst other major changes in law and policy. Where those clues about attitudes towards mixed-ancestry Natives were discovered varied from country to country, but were evident in all three.

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