"What is an Indian?": Identity Politics in United States Federal Indian Law and American Indian Literatures*

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The emergence of the idea of race as a scientific category in the first half of the nineteenth century in the United States was simultaneous with the emergence of biology as a category of knowledge and scientific racism as a mode of justifying both the enslavement of African Americans and the genocide of American Indians.[1] This racial *bio-logic* formed a new discourse of identity in the West, which claimed an autonomous and original realm of analysis for itself, though we can read it today as a particular form of cultural logic. This emergent bio-logic, however ambiguously, enters the discourse of federal Indian law in the landmark case of *U.S. v. Rogers* in 1846.

The Lumbee legal scholar David E. Wilkins gives us this summary of the facts of the case:

> [William S.] Rogers, a yeoman, got into a deadly scuffle in September 1844 with Jacob Nicholson, who, like Rogers, was Euro-American by race, had married into the Cherokee Nation, and was, by Cherokee law, a citizen of their nation. Rogers killed Nicholson by stabbing him in the side with a five-dollar knife. Rogers was arrested, then indicted by the grand jury in the district court of Arkansas in April 1845. When he was brought into federal court to hear the indictment, Rogers, representing himself, argued that the district court lacked jurisdiction to try him because both he and the deceased were regarded legally as *Indians* by the Cherokee Nation and under

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> the 1834 trade and intercourse act the United States lacked jurisdiction in such cases [of Indian on Indian crime]. (39)

The case came to the Supreme Court in 1846 "on a certificate of division" (45 U.S. at 567), the two circuit court judges not being able to decide the matter (ironically, as Wilkins points out, when the case did reach the Supreme Court, Rogers, unbeknownst to the Court, had died by drowning during a prison break [40]). Somewhat contrary to Wilkins' summary, Rogers, in his plea, did not assert that "he and the deceased were regarded legally as *Indians* by the Cherokee Nation" but that he and Nicholson were *Cherokee* Indians (45 U.S. at 568; my emphasis). This may seem to put too fine a point on the matter but I think not. For what Rogers' identification of himself as a "Cherokee Indian" suggests is an important tension between the cultural-political identity: *Cherokee* and what was at this moment emerging as the racial designation *Indian.* That is, the identity of "Cherokee Indian" articulates a coupling of cultural logic with a bio-logic. A longer quote from Rogers' plea can help us understand this coupling, which represents the historic shift in emphasis from *Cherokee* Indian to Cherokee *Indian*, that is, from cultural logic to bio-logic:

> And the defendant further says, that, from the time he removed, as aforesaid, he incorporated himself with the said tribe of Indians as one of them, and was and is so treated, recognized, and adopted by said tribe and the proper authorities thereof, and exercised and exercises all the rights and privileges of a Cherokee Indian in said tribe, and was and is domiciled in the country aforesaid; that, before_____ and at the time of the commission of the supposed crime, if any such was committed, to wit, in the Indian country aforesaid, he, the defendant, by the acts aforesaid, became, and was, and still is, a citizen of the Cherokee nation, and became, and was, and still is, a Cherokee Indian, within the true intent and meaning of the act of Congress in that behalf provided. (568)

The syntax of the plea suggests that to be a "citizen of the Cherokee nation," which is to "exercise . . . all the rights and privileges" thereof,

is to be a Cherokee Indian. On the one hand, we can say that Cherokee thinking incorporates a biological term of race, "Indian" (coined by Columbus and acquiring its biological meaning in the nineteenth-century discourses of law and anthropology), into a cultural-political term, "Cherokee," representing a particular post-invasion national formation that took shape in the eighteenth and nineteenth centuries in response to Anglo-American imperialism. The anthropologist James Mooney notes: "Cherokee, the name by which they are commonly known, has no meaning in their own language, and seems to be of foreign origin" (15). Following Mooney's work, we might speculate that before any national names took hold, clan and town names were the principal names of self-ascription for the peoples known now as the Cherokee.

On the other hand, in contradistinction to the incorporation of bio-logic by cultural logic, Cherokee *Indian* can represent the invasion and displacement of cultural by bio-logic, as Chief Justice Taney suggests in his decision:

> And we think it very clear, that a white man who at mature age is adopted in an Indian tribe does not thereby become an Indian, and was not intended to be embraced in the exception [to the 1834 trade and intercourse act, which exempted Indian-on-Indian crime from federal jurisdiction] above mentioned. He may by such adoption become entitled to certain privileges in the tribe, and make himself amenable to their laws and usages. Yet he is not an Indian; and the exception is confined to those who by the usages and customs of the Indians are regarded as belonging to their race. It does not speak of members of a tribe, but of the race generally, of the family of Indians; and it intended to leave them both [Rogers and Nicholson presumably], as regarded their own tribe, and other tribes also, to be governed by Indian usages and customs. (45 U.S. at 572–73)

The preceding passage suggests that for Taney the issue is not whether or not Rogers and Nicholson are Cherokee Indians but whether or

not they are Indians. The former designation would mean simply that they are "members of a [particular] tribe," which Taney seems willing to concede; the latter designation, however, means not inclusion in a tribe but "in the race generally, of the family of Indians." Taney's decision, in other words, gives us the generic "Indian," invented by Columbus and here refurbished in the language of bio-logic. By 1850, four years after the Court's decision in *Rogers,* "[f]ormal racial classification . . . [became] operative on the census . . . and it was then left to white census enumerators to decide whether or not to accept the classification offered by those who were counted" (Krupat 78).

Yet the passage also implies that Taney's bio-logical Indian is still operating under cultural logic, suggesting that we are witnessing here is the historical moment when the bio-logical Indian was still emerging from the cultural logic of local community, or tribal, logic. Note, for example, that Taney's implicit bio-logical formulation—a white man cannot be an Indian—is contained within a cultural parameter: "a white man who at a mature age is adopted in an Indian tribe does not thereby become an Indian" suggests that white youths and white females can become Indians through the cultural logic of adoption. This apparently strange proviso may be prompted by the anxiety expressed in the opinion that the Indian tribes will become a refuge for adult white male criminals seeking to escape U.S. jurisdiction (45 U.S. at 573). Whatever its cause, its effect is to circumscribe a certain bio-logic by a certain cultural logic. Further, the definition of "Indian" that the opinion offers "is confined to those who by the usages and customs of the Indians are regarded as belonging to their race." Thus, it would appear, the emergent bio-logical category of Indians-as-a-race is determined by "the usages and customs of the Indians" themselves. The logic here seems circular: the race of Indians will determine who is an Indian, but the universal situation it invokes, being entirely abstract (there are in fact no generic Indians beyond various jargons, both legal and scientific, only members of particular communities: clans, tribes, and nations), returns us to the local situation (Rogers is a *Cherokee*), which Taney's opinion, accepted unanimously by the Court, is trying to transcend with its incipient bio-logic. Prior to *Rogers*, Indian communities under certain circumstances adopt-

ed Europeans, whether or not these communities referred to themselves as "tribes" or "nations" or with clan or kinship terms. But, it should be emphasized, adoption by the community did *not* make an "Indian," a Western racial/political category, but a community member, a person belonging to a Native cultural category.

The bio-logic beginning to emerge in *Rogers* would not reach its full force in federal Indian affairs until the early twentieth century, when it would become a distinct component, first, of government determinations of degrees of "Indianness" and, after 1934, of tribal determinations of their own enrollments as well. In the former case, the bio-logic of blood had its first major impact in 1906 through policy that stemmed from amendments to the 1887 Dawes, or General Allotment Act.

The ostensible rationale for allotment was "progressive," the assimilation of the Indians into the American dream of property-holding individualism. At first allottees "born within the territorial limits of the United States" were automatically granted citizenship by the act (Prucha, no. 104, sec.6), which in its original form placed their land "in trust" with the U.S. government "for the period of twenty-five years . . . for the sole use and benefit of the Indian to whom such allotment shall have been made," at the end of which time the allotment was delivered in fee to the allottee (Prucha, no 104, sec 5). The citizenship provision was amended by the Burke Act of 1906, by which "the Indian became a citizen after the patent in fee simple was granted instead of upon the completion of his allotment and the issuance of a trust patent" (Cohen 154).

Among policies implemented in the wake of the Burke Act were authorizations for "competency commissions" to determine whether the newly compelled individual Indians should receive the patent to their land in fee or in trust. Government policy often, though not uniformly,[2] deemed the individual "competent" if he or she were of one-half or less Indian blood (Getches 174; Cohen 169). Just how autonomous the bio-logic of blood had become since its emergence in federal Indian discourses in the first half of the nineteenth century can be read in federal Indian discourses of the first quarter of the twentieth century. For example, *United States v. Shock* (187 Fed. 862 [1911]) finds: "The varying degrees of blood most naturally become the lines of demarcation

between the different classes, because experience shows that generally speaking the greater percentage of Indian blood a given allottee has, the less capable he is by natural qualification and experience to manage his property" (Cohen 169). Similarly the *Annual Report of the Commissioner of Indian Affairs* for 1917 states: "While ethnologically a preponderance of white blood has not heretofore been a criterion of competency, nor 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" (qtd in Cohen 169). Pronouncements like these reveal the cultural logic of identity formation through the social act of intermarriage being translated into the bio-logic of blood; we can read, that is, the naturalization, or biologization, of the social construction of race.

From the time of *U.S. v. Rogers* to the present moment, the bio-logic of Indian identity politics has achieved increasing autonomy, which has generated a new configuration of racism. Between the institution of the Indian Reorganization Act (IRA) in 1934, which ended allotment, and 1940, the BIA began to issue Certificates of Degree of Indian Blood (CDIB), though without any written regulations for such issuance. Written rules were first proposed in 1986 and a draft was composed in 1992. The proposed rules were finally published in the Federal Register in 2000 (65 FR 20775) and, as of this writing, as far as I know, are still currently under consideration by the BIA.[3] The following is language taken from the proposal:

> A Certificate of Degree of Indian or Alaska Native Blood (CDIB) certifies that an individual possesses a specific degree of Indian blood of a federally recognized Indian tribe(s). A deciding Bureau [BIA] official issues the CDIB. We issue CDIBs so that individuals may establish their eligibility for those programs and services based upon their status as American Indians and/or Alaska Natives. A CDIB does not establish membership in a federally recognized Indian tribe, and does not prevent an Indian tribe from making a separate and independent determination of blood degree for tribal purposes. . . . The rolls of

> federally recognized Indian tribes may be used as the basis for issuing CDIBs. The base rolls of some tribes are deemed to be correct by statute, even if errors exist. . . . All portions of the Request for Certificate of Degree of Indian or Alaska Native Blood (CDIB) must be completed. You must show your relationship to an enrolled member(s) of a federally recognized Indian tribe, whether it is through your birth mother or birth father, or both. (65 FR at 20776, 20778)

The bureaucratic language of Indian identity in the year 2000 is markedly different from that of the explicit language of naturalized racial hierarchies, which rationalized competency commissions in the Dawes era. We immediately recognize the latter, with its claims of innate white superiority, as racist, while the language of identity in the federal regulations proposed for the issuance of a CDIB appears in the bureaucratic rhetoric of neutrality. But in both cases the same colonial bureaucracy, albeit at different historical moments, dictates the legitimate forms of Indian identity for the purpose of resource distribution. Whereas the language of the Dawes era expresses unselfconsciously the racial ideology that rationalizes the maldistribution of resources inherent in the colonial system of Indian country, the language of identity in the era of Indian "Self Determination" (the typical title for the post-1970 phase of U.S. colonialism in Indian country) represses or disavows this ideology both in the very form of its expression (the "value-free" language of bureaucracy) and in the source of its promulgation: the contemporary BIA staffed by "about 87 per cent" Indians, including the Commissioner of Indian Affairs and "[m]ost of the high level Indian policy positions within the Interior Department" (Getches 239). An Indian-run BIA is the result of a provision in the IRA, which dictates Indian preference in hiring within the agency. This policy was challenged in 1972 by a group of white workers in the BIA, who claimed it violated the Equal Employment Opportunity Act of 1972, which prohibited racial discrimination in hiring. But the practice was upheld by the Supreme Court in a 1974 decision that found: "The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as mem-

bers of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion" (*Morton v. Mancari* at 554). In this case, it appears, the Court used cultural logic to trump bio-logic. Yet, the regulation in the BIA manual, dictating the hiring preference, and cited in the opinion, was itself contingent on the bio-logic of blood: "To be eligible for preference in appointment, promotion, and training, an individual must be one-fourth or more degree Indian blood and be a member of a Federally-recognized tribe" (554).[4]

Contemporary regulations of blood, couched in a vocabulary that promises scientific objectivity and generated by an Indian-run bureaucracy, give the bio-logic of blood quantum legitimacy at a moment in which we are witnessing the biologization of a whole range of cultural logics organized around a naturalization and universalization of "*the* body" both as a material object of knowledge and as a metaphor for "human nature."

Even given the official respectability (both federal and tribal) of blood quantum regulations at the present moment, the language of the BIA on CDIBs suggests that the bio-logic of blood quantum cannot escape its ground in the cultural logic of the political history from which it emerges. For this language suggests the relative non-identity of federally identified and tribally identified Indians: "A CDIB does not establish membership in a federally recognized Indian tribe, and *does not prevent an Indian tribe from making a separate and independent determination of blood degree for tribal purposes*" (my emphasis). *The Rights of Indians and Tribes* puts it succinctly: "Indian tribes have the authority to determine who is an Indian for tribal purposes but not for state or federal purposes" (Pevar 19) That is, there is no stable answer to the scandalous question that frames the U.S. legal history of Native identity from *Rogers* forward: What or who is an Indian? In 1979, in its opinion in the case of *U.S. v. Broncheau*, the United States Court of Appeals for the Ninth Circuit pointed to the legal instability of Indian identity: "Unlike the term 'Indian Country,' which has been defined in 18 U.S.C.§1151, the term 'Indian' has not been statutorily defined but instead has been judicially explicated over the years. The test, first suggested in United States v. Rogers and generally followed by the courts, considers (1) the degree

of Indian blood; and (2) tribal or governmental recognition as an Indian" (597 F.2d at 1263; internal references omitted).[5] What *Broncheau* points to is not only the legal instability of the term *Indian*, which changes its shape from ruling to ruling, from federal to tribal regulations, but also the way federal Indian law has rationalized the historical ambiguities of bio- and cultural logic found in *Rogers* into the apparent clarity of a two-pronged identity standard, of which, ironically, *Rogers* becomes the ground. However, the cultural prong of the standard is itself grounded in the bio-logical prong. For tribal membership, as noted, is itself widely dependent on some degree of Indian blood.

The question, "What is an Indian?," formulated as such in the wake of *Rogers* and the Dawes Act, appears officially, perhaps for the first time as such, in the *Sixty-First Annual Report of the Commissioner of Indian Affairs* for 1892: "In close connection with the subject of Government control over the Indians and methods of administration, an interesting question has recently arisen, What is an Indian?" (31). Fifty years later, referring to historic shifts in the legal articulation of the term "Indian," Felix Cohen's classic *Handbook of Federal Indian Law* (1942) begins by noting "[t]he lack of unanimity which exists among those who would attempt a definition of Indians" (2). "Who is an Indian?" is the first question under the heading "Frequently Asked Questions" on the BIA web site, which was closed by court order in December of 2001;[6] and its answer is useful not so much for the information it gives, which in view of the legal history of Indian identity is necessarily problematic, but for the way it condenses and displaces the colonial history it represents:

> No single Federal or tribal criterion establishes a person's identity as an Indian. Government agencies use differing criteria to determine who is an Indian eligible to participate in their programs. Tribes also have varying eligibility criteria for membership. To determine what the criteria might be for agencies or Tribes, you must contact each entity directly.
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> To be eligible for Bureau of Indian Affairs services, an Indian must (1) be a member of a Tribe recognized by the Federal

> Government, (2) [be] one-half or more Indian blood of tribes indigenous to the United States (25 USC 479); or (3) must, for some purposes, be of one-fourth or more Indian ancestry:
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> The Bureau of the Census counts anyone an Indian who declares himself or herself to be an Indian. In 1990 the Census figures showed there were 1,959,234 American Indians and Alaska Natives living in the United States (1,878,285 American Indians, 57,152 Eskimos, and 23,797 Aleuts). This is a 37.9 percent increase over the 1980 recorded total of 1,420,000. The increase is attributed to improved census taking and more self-identification during the 1990 count. (Bureau of Indian Affairs)

The bureau's deceptively simple answer raises questions that suggest the way that Indian identity is bureaucratized, composed of legal and administrative contradictions or ambiguities and thus dispersed or deferred until tribunals of various kinds (courts, administrative panels, tribal councils) can come to decisions, which are at best only provisional. For example, in answering the crucial question of eligibility for services implied in "Who is an Indian?", the BIA lists three criteria (with the third being a modification of the second), as cited above: "(1). . . a member of a Tribe recognized by the Federal Government, (2) one-half or more Indian blood of tribes indigenous to the United States (25 USC 479); or (3). . . for some purposes . . . of one-fourth or more Indian ancestry." This language is a modification of the answer previously given by the Bureau to the same question in the third edition (1991) of the pamphlet *American Indians Today: Answers to Your Questions*: "To be eligible for Bureau of Indian Affairs services, an Indian must (1) be a member of a tribe recognized by the federal government and (2) must, for some purposes, be of one-fourth or more Indian ancestry" (13).

The addition of one-half blood quantum to the more recent rule cites as its authority section 479 of the 25th title of the U.S. Code, which in fact is the codification of section 19 of the IRA. Why, then, has the bureau only recently added this proviso to its definition of *Indian*? Section 479 of title 25 gives a definition of "[t]he term 'Indian'" limited by the phrase "*as used in this Act*" (my emphasis). Thus, the BIA appears

to be taking the definition of Indian out of context in order to generalize it. After limiting its definition to specific sections of the code, section 479 defines Indians as "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all *other* persons of one-half or more Indian blood"(my emphasis). Whereas the latest available BIA definition of *Indian* specifies tribal membership *and* one-half blood quantum, except in certain circumstances where one-quarter will suffice, section 479 appears to say that a person is an Indian if she or he is *either* a tribal member *or* is descended from a tribal member and had reservation residency status on June 1, 1934 *or* is "of one-half or more Indian blood." The qualifying phrase "all persons of Indian descent" seems redundant on the one hand; but on the other, if taken at face value, raises troublesome questions, no doubt unintentionally, about how one determines such descent outside of the definitional boundaries of tribal enrollment and/or blood quantum. That is, how is "Indian descent" determined in the first instance?

Thus, the highly restrictive current BIA definition, which combines a high blood quantum with tribal membership, cites as its authority a more inclusive, if still restrictive, definition, in which one-half blood quantum is an *alternative* to either tribal membership or conditional descent from a tribal member. Whether the BIA's citation of the IRA out of context is legitimate rests on individual challenges to the administrative rules governing Indian identity. But, in elaborating a history of the continual federal amending of Indian identity from *U.S. v. Rogers* to the present, I want to emphasize the kind of structural contradictions to which I have been pointing. These result in the fundamental incoherence of Indian identity based in the colonial system of federal Indian law, an incoherence founded on an historical proliferation of laws, legal cases, and regulations that cannot possibly be comprehended in any systematic way.

II.

From its beginnings in the 1970s the criticism of Native American literatures has made the question *what is an Indian?* central to its project.

The problem is that this criticism does not recognize the political history of this question, which *Rogers* and its progeny represent. In the first book-length study of the American Indian novel, published in 1978, Charles R. Larson begins by noting: "The concept of Indian identity . . . is a difficult one" (2). And after musing on the blood quantum and phenotype of several Native authors including N. Scott Momaday and John Joseph Matthews (both now securely in the Native American literary canon), Larson asks: "In short, how can we determine that the writers discussed in this study are American Indians? How can we be certain, even, that they wrote the works attributed to them? I ask these questions because the two primary qualifications for inclusion of an author in this study are, first, the establishment that he or she is genuinely a Native American, and, second, that he wrote the novel himself without the aid of a collaborator or an amanuensis" (4).

Larson is clearly preoccupied with who is "*genuinely* Native American" without at the same time being able to supply a precise definition of "genuine." Larson's rejection of fiction written in collaboration with a non-Indian appears to be based on a desire not to dilute or compromise the "'Indianness'"(2) of the works he includes. Thus, he marginalizes what is now considered to be a major Indian novel, indeed the first major Indian novel published in the twentieth century and I would argue the first major Indian novel published,[7] *Cogewea, The Half-Blood* (1927) by Mourning Dove, because she collaborated with Lucullus Virgil McWhorter (5). As for his working definition of "Indianness" in the first place, Larson turns to the tribal rolls:

> The inclusion of a writer's name on the rolls of his specific tribe (compiled by tribal leaders and kept in the tribal headquarters as well as in the Bureau of Indian Affairs) implies a kind of kinship with his fellow tribesman. . . . What is of especial interest for my study here is the "degree" of Indian blood suggested by the tribal rolls. . . . my concern with these [enrollment] figures has only been to suggest that although a significant test of a writer's Indian origins falls back on the rolls themselves, compiled by the tribal councils, the "Indianness" of the writing may have

> little to do with these figures. . . . Known acceptance by one's peers, then, is probably a more meaningful test of Indianness. Along these lines, it should be pointed out that many of the writers discussed in this volume have had their work included in anthologies of American Indian writing, edited by American Indians—a further test of this acceptance. (6–8)

Such community-centered criteria are certainly used today to determine the "Indianness" of Indian writing. But Larson's presentation of them is circular: how do those Indians who edit Indian anthologies come to be recognized as Indians themselves, if not by the identical processes (tribal enrollment and/or appearance in Indian anthologies) Larson is using to establish his notion of "Indianness" in the first place. Hence, the way he presents his criteria does not answer the question *who is an Indian* but begs it in an endless regress because he fails to query the politics of the question itself. That is, he invokes the tribal rolls initially but does not historicize them by connecting them to the colonial history of federal Indian law from which they arose. Outside the legal fence that *Rogers* and its progeny, as practical applications of the European imaginary, have constructed around Native identities by homogenizing them as *Indian* identity, we might imagine that there are no *Indian* writers, only Cherokee or Navajo or Lakota writers and even more locally defined, only writers with particular clan/kinship names to identify them. Such identities, which certainly depend on community recognition, nevertheless conform not to a single bio-logic but to multiple cultural logics, the kind that obtained in Native communities, and still persist in important ways (however "unofficially") before the onset of federal Indian law, what Gerald Vizenor terms "word wars of the whiteman" (*Bearheart* 14). Within these "word wars," which generate the history of the question *Who or what is an Indian?*, the question itself is nothing but a scandal of European colonialism. At the same time, however, it is crucial to emphasize that across Native communities, particularly in the twentieth century, the term "Indian" has been adopted not simply out of necessity but as a sign of both personal pride and trans-tribal organization to deal in various ways with federal policy, as noted in the

titles of such organizations, past and present, as the Society of America Indians (SAI), the National Congress of American Indians (NCAI) and the American Indian Movement (AIM).

Nevertheless, to repeat the question without emphasizing its political history perpetuates the scandal by naturalizing it. Fifteen years after Larson raises the question in the literary realm, Louis Owens begins his influential study of the American Indian novel *Other Destinies* (1992) with the same question: "To begin to write about something called 'the American Indian novel' is to enter a slippery and uncertain terrain. Take one step into this region and we are confronted with difficult questions of authority and ethnicity: What is an Indian?" (3). For Owens the central theme of the contemporary American Indian novel is the "question of identity" (5): "For the contemporary Indian novelist—in every case a mixedblood who must come to terms in one form or another with peripherality as well as both European and Indian ethnicity—identity is the central issue and theme. . ." (5).

Informed by both postmodern and postcolonial studies, Owens quotes Vizenor to the effect that all "Indians" are "invented"; and he pointedly notes: "For American Indians, the problem of identity comprehends centuries of colonial and postcolonial displacement. . ." (4). But while he remarks that in addition to "some basic knowledge of the tribal histories and mythologies of the Indian cultures at the heart of these novels, readers should be aware of crucial moments in Native American history of the last two centuries [because] [s]uch moments figure prominently in writing by Indian authors" (30), Owens devotes only the last two pages of this thirty-one page introduction to those moments in the history of federal Indian law, and then, he conflates two key cases in this history, *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). Thus, while pointing toward the importance of colonial history in understanding American Indian literatures, Owens does not specify the historic legal forces that give crucial definition to the notion of "invented Indians," charging the phrase with its particular colonial valence; nor does he query the cultural and biologics that both conflict in and construct the term "mixedblood." The history of these logics makes Owens' assertion that "every" contempo-

rary Indian novelist is a "mixedblood" problematic. For, depending on the context, a mixedblood might be a fullblood and vice versa. In the Cherokee Keetoowah society—"a secret religious organization that had been revived and strengthened between 1858–59" (Sturm 71)—Circe Sturm gives us an example of such a context:

> Though the Keetoowah Society was open to Christian Cherokees, it did not admit members of mixed racial ancestry, and even educated full-bloods were suspect. . . . Keetoowah meetings were conducted in Cherokee and the proceedings recorded in the syllabary, which provided a modicum of protection from curious outsiders. However, this "anti-mixed blood sentiment among Keetoowahs was strange, because several important leaders had mixed racial ancestry. . . . The categories of full and mixed were much more complex than mixed biological parentage. . .". Again, we see how full-blood and mixed-blood were social, cultural, and political constructs. "Politically speaking, the terms served as shorthand. Mixed stood for accommodation with whites, a willingness to negotiate. Full bloods were uncompromising and religiously insistent. . ." (72; internal references omitted)

Owens's ahistorical, or under-theorized, use of the term *mixedblood* allows him to stabilize it by assuming the word's transparency and thus to make the claim that "the dominant theme in novels by Indian authors [is] the dilemma of the mixedblood, the liminal 'breed' seemingly trapped between Indian and white worlds"(40). In Cherokee novelist Thomas King's postmodern trickster narrative *Green Grass, Running Water*, one of the Indian characters catches the schematic banality of the mixedblood theme:

> It was a common enough theme in novels and movies. Indian leaves the traditional world of the reserve, goes to the city, and is destroyed. Indian leaves the traditional world of the reserve, is exposed to white culture, and becomes trapped between two worlds. Indian leaves the traditional world of the reserve, gets an education, and is shunned by his tribe. (317)

As King's character points out the *mixedblood between two worlds* has been a standard trope in the literary history of twentieth-century Native writing; though the passage cited locates the trope in cultural texts *per se*, while I want to locate it in standard interpretations of those texts. The project of *Other Destinies* is to revive this exhausted topos by ringing some changes on it. In this vein, Owens remarks of "Leslie Silko, in *Ceremony* (1977), [that she] writes again of a mixedblood protagonist lost between cultures and identities. In the character of Tayo, however, Silko turns the conventionally painful predicament of the mixedblood around, making the mixedblood a metaphor for the dynamic, syncretic, adaptive qualities of Indian cultures that will ensure survival" (26). And of Vizenor, Owens comments that he "rejects entirely the conventional posture of mourning for the hapless mixedblood trapped between worlds, identifying the mixedblood with the shape-shifting visage of trickster, who requires that we reexamine, moment by moment, all definition and discourse" (27). These remarks usefully complicate the figure of the mixedblood within a literary tradition where the figure always teeters on and often falls over the brink of sentimentality. But once we place the term "mixedblood" back within the colonial history of cultural and bio-logic, then, I think, the "two-worlds" paradigm with the mixedblood as mediating term requires revision as an interpretive model, precisely because the terms "mixedblood" and "fullblood" are not dialectical opposites but ambiguous, overlapping signs, overdetermined by their simultaneous positions in a range of contexts (legal, social, cultural, Native, and non-Native).

For example, who says Tayo is a mixedblood? Certainly, the narrative informs us that his mother is Laguna and his father, a nameless white man. But in a world of intermarriage, Tayo is hardly alone or anomalous as a representative figure, however solitary in certain ways he may be because of the alienation of his war experience. As his aunt remarks: "Girls around here have babies by white men all the time now, and nobody says anything. Men run around with Mexicans and even worse, and nothing is ever said" (33). The Laguna Constitution, as ratified in 1958, makes tribal membership contingent on having two tribally-enrolled parents and some degree of Indian blood, unless one is at least a half-

blood Indian (born before 1958 with one enrolled parent) or half-blood Laguna (born in wedlock with one enrolled parent). In making tribal membership very flexible (in terms of blood quantum) for the children of two Laguna parents, the rule suggests the Pueblo's desire to try to limit a reasonably widespread practice of intermarriage, even as it is prepared to admit the children of intermarriage to tribal membership, though the gateway narrows considerably.[8] Because Silko never makes it an issue in *Ceremony,* we can assume that Tayo is a tribally enrolled member of Laguna Pueblo; and a member of a clan, the latter because Laguna is a matrilineal society, clan membership being determined through the mother (Ortiz 443). So, in these terms, readers can assume Tayo is *not* a mixedblood; he is a Laguna Indian, not positioned between two worlds but ceremonially searching for his balance within Laguna society, *after* the trauma of World War II coupled with the colonialist thrust of his secondary school education, which denigrated Laguna epistemologies, has imbalanced him.

Within the novel, the first reference to Tayo as a mixedblood comes from his aunt, who thinks of him as a "half-breed child" (30). But Auntie, it is clear, is the character in the novel who is the most alienated from traditional Laguna practices. Silko stresses not only her Christianity, which "separated the people from themselves . . . tr[ying] to crush the single clan name" (68) but her upbringing of her son, Tayo's cousin, Rocky, who, a fullblood in terms of bio-logic, is virtually a white man in terms of cultural logic. The only other character in the novel who uses the language of racism about Tayo, referring to him as "white trash" (63), is the violent Laguna veteran Emo, who has nothing but contempt for anything Indian and a murderous envy of everything white. Besides Auntie, the Laguna elders who figure importantly in Tayo's life (his grandmother, his uncle Josiah, his uncle Robert, and the Laguna medicine man Ku'oosh) never refer to him in blood-quantum terms but accept him matter of factly as a full-fledged member of the community, who needs their help. Thus, Tayo is only a mixedblood from the most alienated of perspectives. As Owens along with others notices in *Ceremony*, Silko certainly is fascinated with mixture as a positive force—Josiah's cattle are hybrid Hereford/Mexican and Betonie, the

Navajo chanter who provides the ceremony for Tayo's cure is Navajo/Mexican—but Silko never refers to these combinations in the language of blood quantum. So Betonie is not a *mixedblood*; the cattle are not *mixedbloods*; and Tayo is not a *mixedblood*, except in a bio-logical language that Silko marks as alienated.

Owens's insight, previously noted, that "Silko turns the conventionally painful predicament of the mixedblood around, making the mixedblood a metaphor for the dynamic, syncretic, adaptive qualities of Indian cultures that will ensure survival" makes sense. But within the colonial history of federal Indian law it still leaves us asking in what sense or senses Owens uses "mixedblood." For what the sentence says is that all Indians are mixedbloods or virtually so, insofar as mixedbloods are merely metaphors for the dynamism inherent in all Indian cultures.

Owens, then, invokes the importance of history in interpreting American Indian writing; but in interpreting Silko's *Ceremony,* he also bypasses its importance by situating the term "mixedblood" outside the colonial history of cultural and bio-logic, of appearance and behavior, which gives Tayo's "quest for identity" (20) its particular historical weight. Similarly in his reading of Vizenor's *Bearheart*, Owens omits the fact that the narrative of Vizenor's first novel, published in 1978, a year after *Ceremony,* locates his mixedblood tricksters in a flight from the bureaucratic strictures of the BIA and its allied tribal councils created under the Indian Reorganization Act (IRA) of 1934:

> The women continued to govern the circus in the traditions of tribal families, the values of shared consciousness until the patriarchal whitemen rewarded the tribal men as chiefs and rulers. Meanwhile reservation governments were gaining new powers and new generations of evil politicians were seeking control of the sacred cedar. The Indian Reorganization Act created constitutional governments on reservations. The constitutions were designed by white anthropologists and the elections of tribal people were manipulated by colonial federal administrators. Men of evil and tribal fools were propped up in reser-

> vation offices to authorize the exploitation of native lands and natural resources. (12)

When Vizenor introduces the notion of "invented Indians" into the narrative, it is a response that emerges from the history of federal Indian law: "'What does Indian mean?'" (195) asks a member of a vicious community of "hunters and breeders," "'proud people,'" who in the post-apocalyptic world of *Bearheart* live in a walled community restricted to people of their "'own breed'" (189), fullbloods, we might say, though apparently non-Native fullbloods in this case. Ironically, the mixedblood answer is a paraphrase of the BIA regulations governing Indian identity: "An Indian is a member of a recognized tribe and a person who has Indian blood." Doubling the irony, the immediate fullblood response is: "But what is Indian blood?" And the immediate mixedblood rejoinder is: "Indian blood is *not* white blood" (195; my emphasis).

The force of this exchange is to deconstruct the very notion of *blood* by making it no more than the absence of its hypothetical opposite in a continually circular logic that will never yield a signified. Thus, the logic of *Bearheart* insists that the terms of blood quantum have no meaning whatsoever outside the colonial discourses that enforce them. This insistence results in the irony, intentional or not, produced by Vizenor's substitution of the term "mixedblood" for the term "Indian." For both terms are produced by the same legal discourse.

Notes

1 For a history of these developments, see Stanton.

2 For a discussion of the varying criteria for competency, see McDonnell, Chapter 7; and Cohen 167–69.

3 I arrived at this date from information supplied to me in a telephone conversation with Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma region, department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401. "In reviewing the Bureau's practices, the Interior Board of Indian Appeals (IBIA) ruled that the degree of Indian blood of an individual Indian cannot be changed by the Bureau on the basis of 'the evidentiary standards set forth in unwritten policy statements' and advised the Bureau to develop and issue regulations, *Underwood v. Deputy Assistant Secretary—Indian Affairs*, 93 I.D. 13, 14 IBIA 3, January 31, 1986. In the absence of regulations,

the Bureau has been without the authority to invalidate or amend CDIBs issued in error. As a result, there are individuals who do not receive services for which they may qualify and individuals who receive services for which they do not qualify" (65 FR at 20776). For a history of the proposal see 65 FR at 20776–78.

4 Title 25 of the Code of Federal Regulations, section 5.1 (25 CFRs 5.1) currently uses the criteria of 25 USC § 479, which does not require minimum blood quantum of any kind if one is tribally enrolled or descended from a specific category of tribal member, though, once again, we ought to remember that the tribal enrollment itself typically requires, among other criteria, a certain blood quantum. The ACLU's handbook, *The Rights of Indians and Tribes*, notes: "Many tribes require that a person have at least one-fourth tribal blood to be enrolled" (Pevar 19).

5 In fact the Wheeler-Howard Act does define "Indian" for its purposes (25 USC 479) and so the Court in *Broncheau* is strictly speaking wrong when it says that "the term 'Indian' has not been statutorily defined." But the definition refers to the use of the term in the Act alone and so appears to be contextually limited, that is, not generally applicable, though the BIA, as I discuss below, has nevertheless tried to generalize from the Act.

6 These questions were accessible on the BIA website <http://www.doi.gov/bureau-indian-affairs.html> before Federal Judge Royce Lambert ordered the site closed in December of 2001 in relation to the Indian trust fund litigation, pending assurances that trust fund accounts were not vulnerable to hacking through the site. These criteria for "Who is an Indian?" can currently be found at <http://lycos.factmonster.com/ipka/A0192524.html>. On request the BIA sent me in November of 2003 a pamphlet titled *American Indians and Alaska Natives*, which contains "Answers to Some Frequently Asked questions." Among these is "Who is an American Indian or Alaska Native?" The answer is: "As a general principle an Indian is a person who is of some degree Indian blood and is recognized as an Indian tribe and/or the United States. No single federal or tribal criterion establishes a person's identity as an Indian. Government agencies use differing criteria to determine eligibility for different programs and services. Tribes also have varying eligibility criteria for membership" ("Who is an Indian?").

It is important to understand the difference between the etymological term "Indian" and the political/legal term "Indian." The protections and services provided by the United States for tribal members flow not from an individual's status as an American Indian in an ethnological sense, but because the person is a member of a tribe recognized by the United States, and with which the United States has a special trust relationship. This special trust relationship entails certain legally enforceable obligations and responsibilities.

There is nothing in this pamphlet about criteria for eligibility for BIA services; and the pamphlet does not define "ethnological." But as we will see in the fol-

lowing discussion, section 479 of the 25th title of the US code suggests that one does not have to be a tribally enrolled Indian to be recognized as an Indian by the federal government if once can prove that one's blood quantum is one-half or more. And the above citation as well points to "some degree of Indian blood" and federal recognition is as sufficient, independent of tribal recognition, to establish one's legal status as an Indian. In any event, this BIA publication is only one more piece of evidence in the case that can be made for the utter incoherencey of the way federal Indian law had historically defined Indian identity.

7 The Cherokee writer John Rollin Ridge published his novel *The Life and Adventures of Joaquin Murieta the Celebrated California Bandit* in 1854. But the book, as the title suggests, in not about Indians, but about Mexicans fighting for their land in Anglo-occupied California. In his study of the U.S. Native novel *Other Destinies*, Louis Owens reads Ridge's championing of Mexican resistance to U.S. land theft as a displacement of the novelist's criticism of the U.S. theft of Native lands, while noting that the brief portraits of California Indians in the novel are scurrilously stereotypical. Owens finds this simultaneous embrace of Mexican/Indian land rights and "racist" view of California Indians "paradoxical" (39). I find, on the other hand, that Ridge's racist portraits of the only literal Indians in the novels make it difficult to read the novel as an indirect defense of Native land rights. Ridge himself, born in 1827, was the son of one of the leaders of the Treaty Party, which in the 1830s supported removal and signed the infamous Treaty of New Echota (1835). This treaty violated the will of the majority of the Cherokees against removal, as expressed in the elected government of John Ross, and in the Cherokee Constitution, which, as noted, forbid sales of Cherokee land by persons acting without the authority of the Cherokee council. In 1839, after their arrival in what would become the state of Oklahoma, the leaders of the Treaty Party, including Ridge's father, grandfather, and cousin (Elias Boudinot) were assassinated for their subversion of the Cherokee polity. After the assassinations, Ridge and his mother left Oklahoma for Fayetteville, Arkansas. In 1850, after killing David Kell, a Cherokee whom he suspected of being one of his father's assassins, Ridge left for California (Hoxie 550–52). S. Alice Callahan's novel *Wynema* (1891), the first novel we know to have been published by a U.S. American Indian woman, remains to be critically assessed, though A. Lavonne Brown Ruoff's introduction to her University of Nebraska Press edition marks an important beginning to this process.

8 The Laguna Constitution, with membership requirements, as ratified in 1958 can be found at <http://thorpe.ou.edu/IRA/1958nmpuebcon.html>. While Tayo was born in a fictional time which lies outside the purview of the Laguna Constitution (the time of the novel is immediately following WWII, presumably placing Tayo's birth date somewhere in the 1920s), he would appear to be a half-blood Indian with an enrolled mother, which would afford him membership in the tribe if the Constitution was applicable.

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