The General Allotment Act "Eligibility" Hoax

Distortions of Law, Policy, and History in Derogation of Indian Tribes

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In 1992, South End Press of Boston published a collection of essays titled *The State of Native America,* edited by M. Annette Jaimes. The centerpiece of this scholarly appearing volume is a brief essay titled "Federal Indian Identification Policy: A Usurpation of Indigenous Sovereignty in Native North America,"[1] a controversial polemic by Jaimes. My primary focus in this critique is the veracity of some remarkable assertions bearing on the field of Indian law and the sovereign rights of Indian tribes as put forth in Jaimes's essay. These assertions have been relied on by other authors since publication of *The State of Native America*[2] and have been embraced with particular enthusiasm by writer Ward Churchill, the author of numerous highly controversial commentaries on federal law and Indian tribes. Before scrutinizing Jaimes's dubious assertions, a few observations concerning Churchill's relationship with her essay are in order.

At the time *The State of Native America* was published, M. Annette Jaimes—known today as Marianette Jaimes-Guerrero (an incorporation of a former pseudonym, "Marianna Guerrero")[3]—was a colleague of Churchill's at the Center for Studies of Ethnicity and Race in America (CSERA) at the University of Colorado at Boulder. In *The State of Native America,* Churchill formally is acknowledged as the author or coauthor of four essays in the volume;[4] moreover, Churchill's distinctive anti-tribal ideology[5] permeates many of the essays in the volume, even those purportedly authored by others, such as "Federal Indian Identification

Policy" and "American Indian Water Rights," the latter attributed to Marianna Guerrero.[6] Indeed, so interchangeable are the ideology, rhetoric, and writing style in "Federal Indian Identification Policy," the essay by Marianna Guerrero, and other essays in the volume with essays that have appeared under Churchill's name in books such as *Struggle for the Land* and *Indians Are Us?*[7] that whole passages from essays in *The State of Native America* by authors other than Churchill can be found in near-verbatim form in Churchill's other writings.[8] Thus, readers should note from the outset that it remains unclear whether the controversial assertions in "Federal Indian Identification Policy" in fact originated with Jaimes-Guerrero alone or instead were the product of an unspoken collaboration between CSERA colleagues Jaimes-Guerrero and Churchill. That Churchill may have had a hand in drafting "Federal Indian Identification Policy" would help explain the zeal with which he continues to embrace and propagate the controversial assertions that originated therein and that, as discussed below, are false.

THE STATE OF NATIVE AMERICA: ORIGINS OF THE GENERAL ALLOTMENT ACT "ELIGIBILITY" HOAX

The Jaimes-Guerrero/Churchill thesis as first expressed in "Federal Indian Identification Policy" is that Indian tribes deserve to be reviled and actively opposed for employing tribal membership criteria that require an individual to be possessed of a given degree or "quantum" of tribe-specific Indian blood—typically one-fourth—in order to be eligible for tribal enrollment. According to that thesis, tribes' "blood quantum" requirements are odious and objectionable because these requirements originated in the General Allotment Act of 1887 (also called the Dawes Act),[9] an act of Congress that ushered in the so-called allotment and assimilation era of federal Indian policy. The act had a devastating impact on Indian tribes, resulting in a loss of two-thirds of all Indian land holdings—ninety million acres—by the time the allotment process was brought to a halt by congressional passage of the Indian Reorganization Act in 1934.[10] In the words of Jaimes-Guerrero, the General Allotment Act entailed "a devious approach" to manifesting the federal government's desire to avoid discharging its treaty obligations to Indian tribes:

> This [devious approach] was found in the so-called "blood quantum" or "degree of Indian blood" standard of American Indian identification which had been adopted by Congress in 1887 as part of the General Allotment Act. The function of this piece of legislation was to expedite the process of Indian "civilization" by unilaterally dissolv-

ing their collectively (i.e., nationally) held reservation land holdings. Reservation lands were reallocated in accordance with the "superior" (i.e., Euroamerican) concept of property: *individually* deeded land parcels, usually of 160 acres each. Each Indian, identified as being those documentably of *one-half or more Indian blood,* was entitled to receive title in fee of such a parcel; all others were simply disenfranchised altogether. Reserved Indian land which remained unallotted after all "blooded" Indians had received their individual parcels was to be declared "surplus" and opened up for non-Indian use and occupancy.

Needless to say, there was nowhere near enough Indians meeting the Act's genetic requirements to absorb by individual parcel the quantity of acreage involved in the former reserved land areas. . . .

By the early 1900s, then, the eugenics mechanism of the blood quantum had already proven itself such a boon in the federal management of its Indian affairs that it was generally adapted as the "eligibility factor," triggering entitlement to any federal service from the issuance of commodity rations to health care, annuity payments, and educational benefits. If the government could not repeal its obligations to Indians, it could at least act to limit their number, thereby diminishing the cost associated with underwriting their entitlements on a per capita basis. Concomitantly, it must have seemed logical that if the overall number of Indians could be kept small, the administrative expenses involved in their service programs might also be held to a minimum. Much of the original impetus toward the federal preemption of the sovereign Indian prerogative of defining "who's Indian," and the standardization of the racist degree-of-blood method of Indian identification, derived from the budgetary considerations of a federal government anxious to avoid paying its bills.[11]

Having thus established in her readers' minds the perception that the General Allotment Act restricted eligibility for allotments exclusively to Indians who were "documentably of *one-half or more Indian blood,*" Jaimes-Guerrero criticizes Indian tribes for purportedly having modeled their tribal enrollment requirements on this federally imposed standard:

> What has occurred is that the limitation of federal resources allocated to meeting U.S. obligations to American Indians has become so severe that Indians themselves have

> increasingly begun to enforce the race codes excluding the genetically marginalized from both identification as Indian citizens and consequent entitlements. In theory, such a posture leaves greater per capita shares for all remaining "bona fide" Indians.[12]

Jaimes-Guerrero concludes that unless Indian people rise up and forcefully throw off Indian tribes' own "racist" enrollment requirements as derived from the despised General Allotment Act's "blood quantum mechanism," a grim future lurks on the horizon for all Indian people:

> If American Indians are able to continue the positive trend in which we reassert our sovereign prerogative to control the criteria of our own membership, we may reasonably assume that we will be able to move onward, into a true process of decolonization and reestablishment of ourselves as functioning national entities. The alternative, of course, is that we will fail, continue to be duped into bickering over the question of "who's Indian" in light of federal guidelines, and thus facilitate not only our own continued subordination, expropriation, and colonization, but ultimately our own statistical extermination.[13]

A major defect in Jaimes-Guerrero's (and, as discussed below, Churchill's) attack on Indian tribes' use of blood quantum requirements in tribes' enrollment criteria is that this assault rests squarely on a foundation of false information about the General Allotment Act. Despite Jaimes-Guerrero's and Churchill's repeated assertions that the act required any Indian applying for an allotment to be "one-half or more Indian blood" in order to receive an allotment, *the General Allotment Act in fact contains no such requirement.* Rather, Jaimes-Guerrero and Churchill apparently have fabricated this "requirement" in order to foment, through the presentation of false and misleading information, popular hostility toward Indian tribes.

THE GENERAL ALLOTMENT ACT: WHAT IT SAYS, AND WHAT IT DOESN'T SAY

The General Allotment Act is codified, as amended, in Title 25 of *United States Code Annotated (U.S.C.A.).*[14] The act's various components are interspersed among other topically related congressional enactments that, taken all together, make up Chapter 9 (Allotment of Indian Lands) and Chapter 11 (Irrigation of Allotted Lands) of *U.S.C.A.* Title 25. Chapter 9 alone—which covers the bulk of the codified provisions of the General Allotment Act (all but sec. 381)—spans 211 pages of text, ref-

erences, and notes; Chapter 11—which contains the single codified provision of the General Allotment Act pertaining to the irrigation of allotted lands (sec. 381)—spans an additional 16 pages of text, references, and notes. Because of the General Allotment Act's complexity and its distribution in Title 25 of *U.S.C.A.* among a number of references to other congressional enactments—some of which *do*, in fact, make reference to quanta of Indian blood, as discussed below—many readers simply may have taken for granted the validity of Jaimes-Guerrero's and Churchill's recurring assertions about the act's requiring Indians to be "one-half or more Indian blood" in order to receive allotments.

Unfortunately, reliance on the veracity of Jaimes-Guerrero's and Churchill's assertions about the General Allotment Act is grievously misplaced because the act does not contain the federally imposed, blood quantum–centered "eligibility" requirement that those writers repeatedly claim it does. In substance, the codified provisions of the act, as amended, may be summarized briefly as follows:[15]

> Sec. 331 authorizes the president to survey Indian lands for the purpose of assigning individual allotments of no more than 80 acres of agricultural land or 160 acres of grazing land "[i]n all cases where any tribe or band of Indians has been or shall be located upon any reservation. . . ."[16]
>
> Sec. 332 provides that allotments "shall be selected by the Indians, heads of families selecting for their minor children," but that "agents shall select for each orphan child" as well as for "any one entitled to an allotment [who] fail[s] to make a selection within four years after the President shall direct that allotments may be made on a particular reservation."
>
> Sec. 333 authorizes "special allotting agents" appointed by the president to assign individual allotments to reservation Indians.
>
> Sec. 334 provides that an allotment from public domain lands shall be available for "any Indian not residing upon a reservation, or for whose tribe no reservation has been provided."
>
> Sec. 339 exempts the lands of certain tribes, including seven tribes located in Oklahoma, from the act's applicability.
>
> Sec. 341 specifies that the act does not affect "the right and power of Congress to grant the rights of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation."

Sec. 342 specifies that the act does not "prevent the removal of the Southern Ute Indians from their present reservation in southwestern Colorado to a new reservation by and with the consent of the adult male members of said tribe." Sec. 348 directs the secretary of the interior to issue "trust patents" to allottees, ensuring that the United States "will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian [allottee]," after which period "fee patents" would be issued, "discharged of said trust and free of all charge or incumbrance whatsoever." This section also authorizes the secretary of the interior to negotiate, under the president's direction, with any tribe whose lands have been allotted "for the purchase and release by said tribe . . . of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell," and authorizes homesteading by white settlers on any such ceded "surplus lands." Further, this section permits religious societies and other organizations to continue occupying reservation lands they occupied at the time the act was passed "for religious or educational work among the Indians," and it specifies a preference for the hiring of Indians in public service positions related to the act's implementation, so long as such Indians "have availed themselves of the provisions of this Act and become citizens of the United States."

Sec. 349 provides that Indian allottees would become subject to state civil and criminal laws, and, originally, that they would become citizens of the United States and of the respective states. In 1906, Congress substantially amended this section by passing the "Burke Act," specifying that an allottee would be subject to state laws and rendered a state and federal citizen only *after* issuance of the final "fee patent" but also providing a mechanism for expediting expiration of the trust status of allotments by authorizing the secretary of the interior to declare any Indian allottee "competent and capable of managing his or her affairs at any time [and] to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed."[17] With Congress's passage of the Indian Citizenship Act in 1924,[18] the provisions of this section of the General Allotment Act relating to the ultimate granting of state and federal citizenship to allottees thereby were mooted, and hence those provisions were omitted from the codification of the act.[19]

> Sec. 354 provides that an allotment shall not "become liable to the satisfaction of any debt contracted prior to the issuing of the final [fee] patent."
> Sec. 381 authorizes the secretary of the interior to regulate the distribution of water necessary to irrigate for agricultural purposes the lands subject to the act in order "to secure a just and equal distribution" of such water among reservation Indians.

In none of these provisions does the General Allotment Act purport to define "Indians" as rendered subject to the act. And certainly there is no language in any of these provisions to suggest that persons of less than half Indian blood were to be considered ipso facto ineligible for allotments, as claimed by Jaimes-Guerrero and Churchill.

However, the *Code of Federal Regulations* provides clarification regarding Congress's intent in making "Indians" eligible for allotments under the General Allotment Act. The topic of "Indian Allotments" is covered in volume 43 of the *Code of Federal Regulations* at part 2530; one provision in that part, titled "Qualifications of applicants," reads as follows:

> An applicant for allotment under the fourth section[20] of the [General Allotment Act], as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.[21]

As indicated in this provision from the *Code of Federal Regulations,* Congress *did not* make eligibility for allotments under the General Allotment Act hinge upon an applicant being "documentably of one-half or more Indian blood," as Jaimes-Guerrero erroneously asserts in "Federal Indian Identification Policy." Indeed, in enacting the 1887 General Allotment Act, Congress imposed no blood quantum–specific "eligibility" requirement on Indians at all. Instead, Congress made eligibility for allotments under the act depend exclusively on the tribes' own independent membership determinations. And as the substantive regulation

interpreting the statute expressly states, whether an applicant qualifies for an allotment by virtue of being a tribal member is a question to be resolved according to the tribe's own sovereign criteria and traditions: "Such qualifications may be shown by the laws and usages of the tribe."[22]

That Congress *did not* limit eligibility for allotments under the General Allotment Act to persons "of one-half or more Indian blood" is further evinced by congressional passage of legislation in 1894, 1901, and 1911, together providing, as codified at 25 *U.S.C.A.* sec. 345 under the heading "Actions for allotments," that "[a]ll persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act" are permitted to bring suit in federal court to vindicate their asserted rights.[23] It would seem strange indeed if Congress in the years immediately following passage of the General Allotment Act had created a right of action for individuals of any degree of Indian lineage to secure their allotment rights if the General Allotment Act itself had denied allotments to all Indians except those "of one-half or more Indian blood." While the implementation of Congress's allotment policy assuredly was misguided—*catastrophically* so—it did not reach the degree of absurdity that would obtain if Jaimes-Guerrero's version of historical events were to be believed since in truth the General Allotment Act *did not* limit eligibility for allotments in the manner described by Jaimes-Guerrero.

An entry in the legal encyclopedia *American Jurisprudence* also reflects the fact that the General Allotment Act contains no requirement that an Indian applying for an allotment under the act be "of one-half or more Indian blood" but instead renders eligible for an allotment any member of an Indian tribe, regardless of degree of Indian blood. Under the heading "Persons Entitled to Allotment," *American Jurisprudence* summarizes the law in the following terms:

> The provision of the General Allotment Act, governing allotments to Indians on reservations, makes no distinction between Indians of full and mixed blood; rather, all Indians, whether of full or mixed blood, who are living on a reservation in the tribal relation are entitled to share in the allotment.[24]

Whatever responsible primary or secondary source of information about eligibility for allotments under the General Allotment Act one consults, one finds no reference at all to any "race codes excluding the genetically marginalized from . . . identification as Indian citizens."[25] The reason for this universal absence of any mention of such "race codes" is that the General Allotment Act contains no such "race codes"

for determining eligibility for allotments. For although the General Allotment Act without a doubt represented a contemptible effort by Congress—motivated by prevailing prejudices that viewed Indian people as racially and culturally inferior—to strip Indian tribes of all collectively held lands, force Indian people to assimilate into white society, and generally undermine the tribes' territorial sovereignty,[26] the 1887 legislation nevertheless *did not* effectuate a "usurpation" of the sovereign right of tribes to determine their own members, as Jaimes-Guerrero claims. Then, as now, it was the tribes themselves—not the federal government—which maintained and guarded the sovereign prerogative of determining tribal citizenship.[27]

To be sure, after Congress amended the General Allotment Act by passing the so-called Burke Act in 1906,[28] federal officials entrusted with administering the allotment program *did* employ from 1917 to 1920 a scheme whereby determinations as to whether allottees were "competent and capable of managing [their] affairs"—and hence subject to having the trust status of their allotments canceled by the issuance of "fee patents"—were linked to allottees' percentage of Indian blood. This allotment policy implementation scheme was announced on April 17, 1917, by Indian Affairs Commissioner Cato Sells, and as historian Janet McDonnell has noted, it "arbitrarily release[d] thousands of Indians from guardianship and contribute[d] greatly to the destruction of the Indian estate." McDonnell elaborates:

> After 1917, . . . the government had the authority to force fee patents on Indians in two ways: on the basis of a competency commission recommendation, or by arbitrary issuance to an allottee with less than one-half Indian blood who was able-bodied and mentally competent. The 1906 Burke Act had given the Indian Office the authority to issue fee patents before the end of the trust period only when Indian landholders applied for them. Sells and [Secretary of the Interior Daniel K.] Lane, however, misconstrued the Burke Act. Without any legislative authority, in 1917 they began forcing fee patents on all Indians with a certain blood quantum whether they wanted them or not.[29]

With growing concerns about the tragic social effects—especially the swelling tide of Indian poverty and homelessness—that resulted from the government's experimental use of blood quantum to determine "competency," and with President Woodrow Wilson's appointment of John Barton Payne to replace Lane as secretary of the interior, the Indian Office effectively abandoned that controversial policy in 1920, resuming a more conservative, case-by-case approach to determinations of "competency."[30] In an overall assessment of the Indian Office's "competency"

policy as implemented during the years 1917–20, McDonnell writes: "The policy of arbitrarily issuing fee patents to certain Indians without their consent was immoral and illegal. It violated both the provisions and the intent of the Dawes Act. Moreover, that policy was racist in that it directly linked percentage of white blood to competency."[31]

Of course, the Wilson administration's 1917–20 "competency" policy assuredly is *not* what Jaimes-Guerrero purports to be describing when she asserts that under the 1887 General Allotment Act, "[e]ach Indian, identified as being those documentably of *one-half or more Indian blood*, was entitled to receive title in fee of such a parcel; all others were simply disenfranchised altogether."[32] Still, it is possible that Jaimes-Guerrero is somehow confusing "eligibility" for an initial allotment under the 1887 legislation with "eligibility" for unilateral cancellation of an allotment's trust status under the 1917–20 "competency" policy. But since Jaimes-Guerrero provides no citations at all to any authority supporting her erroneous statements concerning the federal government's allotment policy, the explanation for her confusion remains a mystery. And in any event, Jaimes-Guerrero's eagerness to "beat up the victim" of allotment policy—that is, Indian tribes themselves—by falsely accusing tribes of complicity in that destructive and insidious policy[33] surely betrays a more pervasive deficiency in Jaimes-Guerrero's approach to Indian law and policy than merely a tendency to confuse and misreport historical facts.

To more clearly comprehend the illegitimacy of the aspersions that Jaimes-Guerrero casts on Indian tribes via the General Allotment Act's purported "'degree of Indian blood' standard of American Indian identification," an additional complexity concerning turn-of-the-century allotment policy must be addressed. One must take care to distinguish the General Allotment Act itself—codified as amended in the precise sequence of *U.S.C.A.* sections listed and summarized earlier—from other, subsequent federal legislation pertaining to specific named tribes and mentioned intermittently among the *U.S.C.A.* notes and references that accompany the act's codified provisions. In some instances Congress imposed blood quantum restrictions with respect to the inheritance of Indian lands allotted to the members of particular tribes under acts *other than* the General Allotment Act, and as alluded to previously, in the corresponding annotations reflecting the language used by Congress and by interpreting courts for describing and discussing those restrictions, phrases like Jaimes-Guerrero's "one-half or more Indian blood" occur periodically.[34]

But these assorted annotations employing the phrase "one-half or more Indian blood" and similar phrases in *U.S.C.A.* emphatically *do not* pertain to eligibility for allotments under the General Allotment Act, the subject of Jaimes-Guerrero's and Churchill's recurring distor-

tions. Rather, such phrases in the *U.S.C.A.* annotations appear only in connection with special acts of Congress addressing the supervision of the lands of those few tribes expressly *exempted* from the application of the General Allotment Act.[35] Thus, the presence of the phrase "one-half or more Indian blood" within some of those annotations in no way lends credence to Jaimes-Guerrero's and Churchill's assertions about who Congress understood "Indians" to be when Congress passed the General Allotment Act. As must be repeated, Congress *did not* limit eligibility for allotments under the General Allotment Act to persons "of one-half or more Indian blood." Rather, Jaimes-Guerrero and Churchill have invented that nonexistent "standard" in order to denigrate the sovereign enrollment criteria of Indian tribes.

Thus, despite praise elsewhere in *The State of Native America* of Jaimes-Guerrero for having done "a fine job of exposing the political and economic ramifications of the U.S. imposition of eugenics codes upon Native Americans,"[36] it is clear that in "Federal Indian Identification Policy" she in fact has built her anti-tribal thesis on a foundation of false assertions about the contents and meaning of the General Allotment Act. Once again, it is important to note carefully that with respect to the dramatic assertions contained in the lengthy passages quoted earlier from "Federal Indian Identification Policy," Jaimes-Guerrero provides no citation to any section of the General Allotment Act wherein her "half-blood or more" eligibility "standard" can be found. The reason for this omission is clear: the General Allotment Act *does not contain* the eligibility "standard" that Jaimes-Guerrero falsely has assigned to it. That Jaimes-Guerrero has done "a fine job" of disparaging Indian tribes with this invented information is, at best, an indication of that writer's effectiveness as a conduit for the spreading of false propaganda in derogation of tribal sovereignty.

However, it is Churchill who has gotten the most mileage from the false information contained in "Federal Indian Identification Policy." Beginning with a "table" in *The State of Native America* coauthored with Glenn T. Morris and titled "Key Indian Laws and Cases," Churchill on numerous occasions has repeated the false General Allotment Act "eligibility" scheme in his continuing efforts to facilitate through his writings the proliferation of negative public attitudes toward Indian tribes. Thus, Churchill and Morris include the following description in summarizing the General Allotment Act:

> In order to retain any land at all, native people—legally defined for the first time on the basis of a racist "blood quantum" code employed for identification purposes by the federal government—were compelled to accept individually deeded land parcels.[37]

Like Jaimes-Guerrero, Churchill and Morris provide no citation to any particular provision of the General Allotment Act that would enable a reader to ascertain the validity of their allegations about the existence of a "racist 'blood quantum' code" that the federal government allegedly contrived and employed in deciding whether Indian applicants for allotments were eligible to receive "any land at all" under the act's provisions. This lack of a supporting citation is explained by the fact that, contrary to Churchill and Morris's assertions, the General Allotment Act never contained any such federally imposed eligibility "code" at all.[38]

STRUGGLE FOR THE LAND: TAKING THE HOAX AND RUNNING WITH IT

In his book *Struggle for the Land,* published in 1993, Churchill again propagates his General Allotment Act "eligibility" scheme in passages animated by increasingly strident denunciations of Indian tribes—and, once again, without ever providing a verifiable citation to the General Allotment Act. In an essay in *Struggle for the Land* titled "Perversions of Justice," Churchill states that the General Allotment Act "imposed for the first time a formal eugenics code—dubbed blood quantum—by which American Indian identity would be federally defined on racial grounds rather than by native nations themselves on the basis of group membership/citizenship."[39] Churchill appends an endnote to this passage that cites not the General Allotment Act but rather solely Jaimes-Guerrero's "Federal Indian Identification Policy" in its entirety.[40] Within that endnote, Churchill includes the following comment: "It is noteworthy that official eugenics codes have been employed by very few states, mostly such unsavory examples like nazi Germany (against the Jews), South Africa (against 'Coloreds') and Israel (against Palestinian Arabs)."[41]

Churchill's attempt to denigrate Indian tribes' enrollment procedures by associating those procedures with the "federal eugenics criteria"[42] allegedly contained in the General Allotment Act and with the "unsavory" practices of oppressive regimes like Nazi Germany and apartheid-embracing South Africa is unavailing, however, because of Churchill's failure to establish even the *existence* of the "federal eugenics criteria" that, in Churchill's scheme, was grafted onto Indian tribes' enrollment procedures by the General Allotment Act. Moreover, Churchill is incapable of overcoming this fatal flaw in his anti-tribal scheme by relying exclusively on Jaimes-Guerrero's "Federal Indian Identification Policy" because, as explained earlier, Jaimes-Guerrero, too, had built her General Allotment Act "eligibility" scheme on fabricated assertions that she, like Churchill, did not even attempt to trace directly to the General Allotment Act itself.[43]

Churchill carries forward his propaganda-driven attack on tribal self-determination in another essay in *Struggle for the Land*, titled "American Indian Self-Governance." Here, Churchill gives expression to his anti-tribal sentiments by impugning the government of the Navajo Nation. In one segment of that diatribe, Churchill asserts the following:

> Even the citizenry of the Navajo Nation has been defined by the federal government through imposition of a formal eugenics code termed "blood quantum" and nearly a century of direct control over tribal rolls described elsewhere in this volume. These methods of manipulating and arithmetically constricting the indigenous population have become so imbedded in the Indian consciousness and psyche that Washington can rely upon the "self-governance" mechanisms of Native America to abandon their own traditions and concern with sovereignty, adhering to federal definitions of Indian identity. The ugly burden of imposing racism is now carried out by the oppressed themselves.[44]

Churchill's reference to matters "described elsewhere in this volume" that presumably explain the federal government's "direct control over tribal rolls" is an allusion to Churchill's prior, unsubstantiated assertions in "Perversions of Justice," discussed earlier, concerning the General Allotment Act's alleged "federal eugenics criteria." As in that previous essay, Churchill in "American Indian Self-Governance" provides no citation to the General Allotment Act to support his allegations in derogation of Indian tribes. Instead, in an endnote Churchill advises readers to consult a version of Jaimes-Guerrero's "Federal Indian Identification Policy" "[f]or detailed elaboration on this theme."[45]

Churchill again invokes this "theme" in the final essay in *Struggle for the Land*, a piece titled "I Am Indigenist." At the beginning of that essay, Churchill professes himself to be "one who not only takes the rights of indigenous peoples as the highest priority of my political life, but who draws upon the traditions—the bodies of knowledge and corresponding codes of values—evolved over many thousands of years by native peoples the world over."[46] Notwithstanding this attempt to portray himself as a champion of Indian rights, Churchill uses the occasion of his "I Am Indigenist" manifesto to further his attack on tribal self-determination and tribal sovereignty, aggressively putting forth once again his false General Allotment Act "eligibility" scheme in order to disparage Indian tribes. He writes:

> The Europeans and subsequent Euroamerican settlers . . . foisted the notion that Indian identity should be determined

> primarily by "blood quantum" an outright eugenics code similar to those developed in places like nazi Germany and apartheid South Africa. Now, *that's* a racist set of policies and principles if there ever was one. Unfortunately, a lot of Indians have been conned into accepting this anti-Indian absurdity, and that's something to be overcome. But there's also solid indication that quite a number of native people continue to strongly resist such things as the quantum system.[47]

Churchill appends an endnote to this propaganda, advising readers to "see" Jaimes-Guerrero's essay in *The State of Native America* for additional information "[o]n federal quantum policy." And, as always, Churchill neglects to provide any citation to the General Allotment Act itself.[48]

INDIANS ARE US? REPEATING THE HOAX AND ALLOTTING IT IN SEVERALTY TO OTHERS

In his next book, *Indians Are Us?,* Churchill invokes the false General Allotment Act "eligibility" scheme in three different essays. First, in "Bringing the Law Home," Churchill alerts his readers to "such seemingly innocuous federal policies as those concerning Indian identification criteria," which, according to Churchill, "carry with them an evident genocidal potential." Churchill then averts once again to "a eugenics formulation—dubbed 'blood quantum'—ushered in by the 1887 General Allotment Act," by means of which "the government has set the stage for a 'statistical extermination' of the indigenous population within its borders."[49] In an endnote, Churchill asserts—again, without citing any supporting authority for the "standard" that he encloses in quotations marks—that "[t]he 1887 'standard' was 'one-half or more degree of Indian blood.'" At the conclusion of that same endnote, Churchill elaborates only that "[t]he term 'statistical extermination' comes from M. Annette Jaimes, 'Federal Indian Identification Policy,'" as found in *The State of Native America.*[50] In thus making an unsubstantiated statement about the General Allotment Act and its effect on Indian tribes, accompanied by a reference to similarly unsubstantiated assertions in Jaimes-Guerrero's "Federal Indian Identification Policy," Churchill propagates his anti-tribal thesis by means of a familiar formula.

But Churchill then takes a new tack by invoking a passage from a different writer, the acclaimed historian Patricia Nelson Limerick.[51] In the midst of his dubious statements about the "genocidal potential" of the General Allotment Act's "Indian identification criteria," Churchill cites to Limerick's book *The Legacy of Conquest*[52] to suggest that Limerick shares his own concerns about Indian tribes' purported de facto adop-

tion of the General Allotment Act's "eligibility" standard in tribes' enrollment criteria. Churchill writes:

> As the noted western historian, Patricia Nelson Limerick, has observed: "Set the blood-quantum at one-quarter, hold to it as a rigid definition of Indians ["Indianness" in Limerick's original], let intermarriage proceed . . . and eventually Indians will be defined out of existence. When that happens, the federal government will finally be freed from ["free of" in Limerick's original] its persistent 'Indian problem'." Ultimately, there is precious little difference, other than matters of style, between this and what was once called the "Final Solution of the Jewish Problem."[53]

But in the passage that Churchill extracts from *The Legacy of Conquest*, Limerick in fact is not referring to the General Allotment Act at all, Churchill's insinuation to the contrary notwithstanding. Instead, Limerick is emphasizing the validity of Indian tribes' strong (and ultimately successful) objections to the Reagan administration's efforts in 1986 to limit unilaterally the number of Indian people eligible for health care administered by Indian Health Service by requiring any applicant for benefits to have in addition to tribal membership status "at least one-quarter Indian blood."[54] Indeed, far from *opposing* tribes' own enrollment prerogatives, Limerick implicitly *endorses* the right of Indian tribes to determine their own members as an indispensable attribute of tribal sovereignty. The fact that Churchill finds it necessary to contrive a false facade of scholarly support for his anti-tribal thesis by misrepresenting the observations of Limerick ultimately serves only to underscore the true *lack* of any such support from within the ranks of legitimate scholars.

The next articulation in *Indians Are Us?* of the Jaimes-Guerrero/Churchill General Allotment Act "eligibility" scheme arises in Churchill's essay "Nobody's Pet Poodle." Under the heading "Arithmetical Genocide," Churchill executes an invective against the Indian Arts and Crafts Act, a statute enacted by Congress in 1990 in response to concerns raised by tribal leaders and Indian rights advocates about non-Indians falsely representing their artwork as Indian-made in the lucrative art markets of the American Southwest and elsewhere.[55] Endeavoring to discredit Congress's deference in the Indian Arts and Crafts Act to Indian tribes' own citizenship determinations, Churchill dismisses tribes themselves as "entities" whose

> membership rolls originated in the prevailing federal racial criteria of the late 19th century. The initial U.S. motive in quantifying the number of Indians by blood was to

> minimize the number of land parcels it would have to assign native people under provision of the 1887 Dawes Act, thereby freeing up about two-thirds of all reservation land for "homesteading" by non-Indians or conversion into U.S. park and forest land. Tribal rolls have typically been maintained in this reductionist fashion ever since . . .[56]

Once again, Churchill provides no citation to the General Allotment Act. He does indicate his reliance, however, on Jaimes-Guerrero's "Federal Indian Identification Policy," and he repeats his own prior misrepresentation of the views of Limerick:[57]

> Obviously involved is what the Juaneño/Yaqui scholar M. Annette Jaimes calls "a sort of statistical extermination" whereby the government seeks not only to keep costs associated with its discharge of Indian Affairs at the lowest possible level, but to eventually resolve its "Indian problem" altogether. The thinking is simple. As the historian Patricia Nelson Limerick frames it: "Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians ["Indianness" in Limerick's original], let intermarriage proceed as it has ["had" in Limerick's original] for centuries, and eventually Indians will be defined out of existence."[58]

In this manner, Churchill continues to reinforce the edifice of propaganda whose foundation he and Jaimes-Guerrero first had established in *The State of Native America,* purporting to find "support" for this effort in the work of a renowned scholar, Limerick.

But Churchill then takes this disinformation campaign one step farther by supplementing his distortion of Limerick's views with a similar misrepresentation of the views of Russell Thornton, author of the important study of the history of the native population of the Americas, *American Indian Holocaust and Survival.*[59] Churchill attributes to Thornton a concern about the "disappear[ance]" of "Native America as a whole . . . by the year 2080" if the "imposition of purely racial definitions" continues.[60] To this purported reliance on the views of Thornton, Churchill appends an endnote directing readers to pages 174–82 of Thornton's *American Indian Holocaust and Survival.*[61]

But in fact, Thornton makes no such prediction about the demise of Indians in the twenty-first century—not within the range of pages cited by Churchill nor anywhere else in Thornton's book. Indeed, Thornton's outlook concerning the future population of American Indian people is notably optimistic—quite *opposite* the view that Churchill has assigned him.[62] Thus, once again Churchill's asserted reliance on an acclaimed scholar, Thornton, for the decidedly anti-tribal

propositions put forth by Churchill does not withstand even a cursory inquiry into the validity of that reliance. Instead, when one investigates Churchill's purported presentation of the views of Thornton, one finds that Churchill grossly misstates those views, just as he does with regard to the views of Limerick. Notwithstanding Churchill's misrepresentations, neither Thornton's work nor Limerick's endorses or condones opposition to Indian tribes' enrollment requirements. And certainly neither of these prominent scholars can be said to embrace, by any stretch, the general hostility toward Indian tribes that pervades and distinguishes Churchill's writings.

Churchill again interjects his fabricated General Allotment Act "eligibility" scheme in the final essay in *Indians Are Us?* titled "Naming Our Destiny." Here, Churchill delivers a prolonged harangue against popular use of the word *tribe*,[63] positing that "to be addressed as 'tribal' is to be demeaned in an extraordinarily vicious way."[64] Opining further that use of the word *tribe* represents complicity in "a resoundingly racist construction," Churchill writes:

> Undoubtedly, there are those . . . who will wish to argue that such an assessment is overly harsh, that it is somehow skewed toward the negative. Use of the term *[tribe]* with regard to American Indians in this day and age, they will contend, is actually a positive gesture affording appropriately respectful homage to the uniqueness of Native American traditions, especially the importance of kinship systems in indigenous societies. Despite the surface plausibility of such assertions, they are ultimately vacuous, overlooking as they do the operant realities of traditional native life. While it is true that most indigenous societies were, and in many cases are, organized along lines of kinship, this hardly implies the preoccupation with "blood" lines connoted by the term "tribe."[65]

To this, Churchill appends an endnote with familiar content:

> The preoccupation is actually a matter of U.S. policy implementation; a system of identifying Indians in accordance with a formal eugenics code dubbed "blood quantum" which is still in effect at the present time. For analysis of the effects of this, see M. Annette Jaimes, "Federal Indian Identification Policy . . . ," in . . . *The State of Native America* . . .[66]

From both the passage from the body of the text and its corresponding endnote, it would appear that Churchill's use of invented historical information concerning the General Allotment Act is part and parcel

of Churchill's elaboration of additional, related propaganda, such as his fostering of a condemning public attitude generally toward Indian *tribes* that formally refer to themselves as such. Hence, readers who do not partake of Churchill's abhorrence for the word *tribe* should understand that they have no cause for embarrassment or apology, since Churchill's display of contempt here is merely one manifestation of an anti-tribal propaganda campaign that is passionately dedicated to "overlooking" not just "the operant realities of traditional native life," but "the operant realities" of numerous other matters pertaining to history, law, and policy as well.

SINCE PREDATOR CAME AND *FROM A NATIVE SON*: RECLAIMING THE HOAX, EMBELLISHING IT, REPUBLISHING IT

During the years following publication of *Indians Are Us?* Churchill has repeated his false claims about the General Allotment Act and its impact on tribal enrollment procedures in three additional books: *Since Predator Came* (1995), the anthology *From a Native Son* (1996), and *A Little Matter of Genocide* (1997).[67] In all these books, Churchill couches his invocation of the General Allotment Act "eligibility" scheme in increasingly vitriolic denunciations of Indian tribes while simultaneously obscuring the true origins of this scheme by employing elaborately—and sometimes comically—misinforming reference notes that seem designed to frustrate readers' efforts to check the accuracy of Churchill's claims.

In the essay "Since Predator Came" in the volume of the same title, for example, Churchill alleges the following very specific "facts" about the General Allotment Act:

> Under provision of this statute, effected in 1887, a formal eugenics code was utilized to define who was (and who was not) "Indian" by U.S. "standards." Those who could, and[68] were willing to, prove to federal satisfaction that they were "of one-half or more degree of Indian blood," and to accept U.S. citizenship into the bargain, received a deed to an individual land parcel, typically of 160 acres or less. Once each person with sufficient "blood quantum" had received his or her allotment of land, the remaining reservation land was declared "surplus" and opened up to non-Indian homesteading, corporate acquisition, or conversion into national parks and forests. . . . The model was later borrowed by the apartheid government of South Africa in developing its "racial homeland" system of territorial apportionment.[69]

In support of these assertions Churchill purports to supply several scholarly references—but none of them constitutes verification of the existence of an eligibility "standard" of "one-half or more degree of Indian blood." With respect to his claims about the General Allotment Act's "formal eugenics code," Churchill simply provides no indication of where one might look to verify the existence of this "code." Instead, Churchill writes in an accompanying endnote, "On this aspect, *see* Ward Churchill, 'Nobody's Pet Poodle,'"[70] in *Indians Are Us?*—but, as discussed earlier, that essay in turn contains only similarly evasive references to the "source" of this asserted blood quantum–specific General Allotment Act "eligibility" scheme. Once again, when the smoke and mirrors are cleared away, it appears that the only known "source" for this scheme is the collective imagination of Churchill and Jaimes-Guerrero.

As for Churchill's statement at the end of this excerpt from the essay "Since Predator Came," that as a "model" the General Allotment Act (as erroneously described by Churchill) "was later borrowed by the apartheid government of South Africa in developing its 'racial homeland' system of territorial apportionment," this, too, is fallacious and misleading. The only reference Churchill offers in support of this statement reads as follows: "On these linkages, see George M. Frederickson, *White Supremacy: A Comparative Study in American and South African History* . . ."[71] But Churchill indicates no specific pages from the Frederickson book wherein a reader might locate any discussion of "linkages" between the General Allotment Act's purported "blood quantum" eligibility requirement and South Africa's system of apartheid; instead, Churchill cites the 356-pages-long Frederickson book *in its entirety*.

However, when one examines Frederickson's book, one discovers that while that volume contains much insight as a comparative study of the historical development of white supremacy and governmental subjugation of nonwhites in the United States and South Africa,[72] nowhere between the covers of the book does Frederickson suggest any "linkages" involving the General Allotment Act's supposed "blood quantum" eligibility requirement, as Churchill falsely insinuates may be found there. But of course, any discussion by Frederickson of such "linkages" would be quite surprising given the fact that the General Allotment Act eligibility "standard" of "one-half or more degree of Indian blood"—so crucial to the promotion of anti-tribal sentiments in the writings of Churchill and Jaimes-Guerrero—does not exist.

In another essay in *Since Predator Came*, titled "Like Sand in the Wind," Churchill spreads his General Allotment "eligibility" propaganda once more:

> Under provision of the statute, each Indian identified as such by demonstrating "one-half or more degree of Indian

> blood" was to be issued an individual deed to a specific parcel of land. . . .
>
> Generally speaking, those of mixed ancestry whose "blood quantum" fell below the required level were summarily excluded from receiving allotments. In many cases, the requirement was construed by officials as meaning that an applicant's "blood" had to have accrued from a single people; persons whose cumulative blood quantum derived from intermarriage between several native peoples were thus often excluded as well.[73]

While the overall thrust of these false statements is the same as that found in Churchill's previous enunciations of his General Allotment Act "eligibility" scheme, Churchill's boldness here in putting forth specific fabricated "facts" makes this passage something of an innovation in the development of Churchill's propaganda. One would expect to find exact, accurate citations to historical sources to "back up" such precise observations about how federal officials "construed" federal policy; Churchill provides none. Instead, as "support" for his specific (and doubtful) allegations of historical "fact," Churchill once more cites *an entire book*—Janet McDonnell's *The Dispossession of the American Indian*[74]—without pinpointing any particular pages.[75] By citing McDonnell's book *as a whole* as the sole reference for his specific allegations, Churchill again frustrates any reader's effort to verify Churchill's purported "facts."

But more importantly, when one examines McDonnell's thoroughgoing analysis of allotment policy, one finds that there is nothing in *The Dispossession of the American Indian* to "support" Churchill's "facts" concerning the purported eligibility "standard" of the General Allotment Act and how that "standard" allegedly was "construed" by federal officials.[76] But, of course, since the Jaimes-Guerrero/Churchill "standard" is nonexistent, readers of *The Dispossession of the American Indian* should not be too disappointed that McDonnell makes no mention of it.[77]

After the release of *Since Predator Came,* Churchill produced an anthology of his previously published writings titled *From a Native Son.* This book consists entirely of assorted "versions" of Churchill's previously published material; thus in reprinting "versions" of "Since Predator Came," "Like Sand in the Wind," "Nobody's Pet Poodle," and "I Am Indigenist," *From a Native Son* repeats substantially the same false information about the General Allotment Act and its alleged impact on tribal enrollment procedures as that which had been conveyed in earlier "versions" of those essays. In this way, Churchill brings additional readers under the influence of his and Jaimes-Guerrero's peculiar "version" of American history, law, and policy.[78]

A LITTLE MATTER OF GENOCIDE: FALSE "FACTS," PHONY "CITATIONS"

Troubling discussions of the General Allotment Act and Indian tribes likewise may be found in Churchill's recent book *A Little Matter of Genocide*.[79] For instance, in endeavoring to draw what otherwise might be instructive comparisons between the Jewish Holocaust and the long history of genocide suffered by Indian tribes indigenous to the Americas,[80] Churchill bungles and effectively discredits his own analysis by repeating the same false propaganda in derogation of Indian tribes that, over time, has emerged as a serious defect warping the entire corpus of Churchill's writings. Thus, readers of *A Little Matter of Genocide* are confronted with the now familiar distortion in Churchill's long essay "'Nits Make Lice'":

> Under provision of the [General Allotment] Act, Indians were universally defined on the basis of "blood quantum"—that is, genetic rather than national-political criteria—for the first time under U.S. law. Once each Indian eligible to be considered one under this new definition had been allotted his or her individual 160-acre parcel, the balance of reserved territory was declared "surplus" and opened to corporate use, homesteading by non-Indians, or conversion into national parks, forests, or military reservations.[81]

Churchill accompanies this purported restatement of historical "fact" with a reference note that—as in *Since Predator Came*—goes beyond merely repeating the fabrication about the General Allotment Act's "blood quantum" eligibility requirement as originally devised in the pages of Jaimes-Guerrero's *The State of Native America*.[82] Rather, in *A Little Matter of Genocide*, Churchill again proceeds to *embellish* that fabrication by purporting to provide precise "details" about how the General Allotment Act's supposed eligibility "standard" was given effect. Thus, in his endnote, Churchill states that in implementing the General Allotment Act's "new definition" of Indians as persons who could "document" that they were "of at least one-half [Indian] 'blood,'" the federal government refused to consider any applicant for an allotment to be "legally identified as native" by virtue of simply adding the quanta of Indian blood from multiple tribal lineages, or by virtue of being formally adopted as a member of an Indian tribe by the tribe itself.[83]

But none of these embellishments of the General Allotment Act's alleged "eligibility" requirement bears true witness to historical fact. As discussed earlier, that act did not require any Indian applicant for an

allotment to be "of at least one-half [Indian] 'blood,'" but instead effectively deferred to Indian tribes' own internal membership standards in determining whether an applicant was an "Indian" and thus "eligible" for an allotment. Hence, the General Allotment Act *did not* "negate[] one of the most important sovereign prerogatives of native peoples" by defining tribes' "own polities" according to "genetic rather than national-political criteria." Churchill's unsupported, contrary assertions in his reference note are simply untrue.

Nevertheless, Churchill repeats these false assertions in a second essay from *A Little Matter of Genocide,* titled "Cold War Impacts on Native North America." In that essay, Churchill states that in the early twentieth century, "the government, having overseen the extermination of the great bulk of all native people within its boundaries, was in the process of formally assimilating (digesting) the residue, both territorially and in terms of population."[84] In the asterisked footnote[85] that accompanies this statement, Churchill adds the following:

> The primary means by which this was to be accomplished was the 1887 General Allotment Act (ch. 119, 24 Stat. 362, 385, now codified at 18 U.S.C. 331 *et seq.*). . . . Once each Indian—defined on the basis of a restrictive "blood quantum" formula designed to minimize the number of people eligible—had been allotted his or her individual parcel (averaging 160 acres apiece), the balance of reserved territory was declared "surplus" and opened up to non-Indian usage.[86]

What is most intriguing about this footnote's invocation of the fabricated General Allotment Act "eligibility" scheme is that it repeats verbatim the same counterfeit citations that appear in the endnote, discussed earlier, from Churchill's essay "'Nits Make Lice.'"[87] Since these counterfeit citations in fact are *not* citations to the General Allotment Act in *United States Statutes at Large* or as codified in *United States Code,* as Churchill holds them out to be, readers who might have presumed that in *A Little Matter of Genocide* Churchill at last has provided a verifiable indication of the legal source of his "eligibility" scheme will find themselves sadly mistaken.

So where *does* Churchill, by way of these "citations," steer readers who want to see evidence of the existence of Churchill's General Allotment Act "eligibility" requirement? Following up on the "leads" provided by Churchill's "citations," one is guided to a part of an "act to grant the Maricopa and Phoenix Railway Company of Arizona the right of way through the Gila River Indian Reservation,"[88] to a part of an "act to regulate commerce" setting up administrative and judicial remedies for violations of the act by common carriers,[89] and to a provi-

sion from *United States Code* that specifies penalties for—ironically—the falsification of coins![90]

All told, from publication of *The State of Native America* in 1992 to the release of *A Little Matter of Genocide* in 1997, Churchill has put forward his false assertions about the General Allotment Act's "eligibility" scheme no fewer than sixteen times in eleven essays published or republished in six different books.[91] In the course of all these multiple iterations of his tribal enrollment/General Allotment Act conspiracy theory, Churchill never once has provided a verifiable citation to the General Allotment Act itself or to any other legitimate source to prove the existence, as a matter of historical record, of Churchill's "one-half or more degree of Indian blood" requirement for obtaining allotments under that act. Indeed, Churchill is *incapable* of producing any verifiable historical evidence of the General Allotment Act's purported blood quantum–centered "eligibility" requirement because, in reality, no such requirement ever has existed. Churchill's recurring reference to this nonexistent requirement is merely one ploy in that writer's continuing campaign to create negative public attitudes toward Indian tribes by means of distortion, evasion, and propaganda.[92]

CONTEMPORARY REASSERTION OF THE HOAX: GANGING UP ON THE INDIAN ARTS AND CRAFTS ACT

While the focus of the this essay has been Churchill's and Jaimes-Guerrero's alterations of fact with respect to a specific piece of federal Indian legislation enacted in the late nineteenth century, by no means is the anti-tribal propaganda pervading those writers' treatment of law, policy, and history limited to statements concerning the 1887 General Allotment Act. In his essay "Nobody's Pet Poodle," for instance, Churchill presents a comparably erroneous and misinforming description of the Indian Arts and Crafts Act,[93] a piece of legislation that, as mentioned earlier, Congress enacted in 1990 "to protect Indian artists"—and, by extension, the art-buying public as well—from the effects of "unfair competition from counterfeits."[94] In attacking this legislation—and the Indian artists and Indian rights advocates who lobbied Congress on tribes' behalf to pass it—Churchill portrays the Indian Arts and Crafts Act in the following pejorative terms:

> The government "standard" involved . . . is that a person can be an "American Indian artist" only if he or she is "certifiably" of "one-quarter or more degree of Indian blood by birth." Alternatively, the artist may be a member of one or another of the federally-sanctioned Indian "tribes" currently existing within the U.S.[95]

Churchill goes on to condemn tribes as "entities" whose "membership rolls originated in the prevailing federal racial criteria of the late 19th century."[96]

But quite apart from Churchill's unavailing efforts, criticized earlier, to forge a link here between tribal enrollment procedures and the General Allotment Act, Churchill's description of the Indian Arts and Crafts Act is *itself* erroneous—and egregiously so. Contrary to Churchill's false characterization, the Indian Arts and Crafts Act *does not* establish—not even as an "alternative" to tribal membership—a "standard" of "one-quarter or more degree of Indian blood by birth" for any person claiming to be an "American Indian artist." In fact, the Indian Arts and Crafts Act specifies no particular minimum blood quantum requirement at all in providing civil and criminal sanctions for the selling of Indian art "in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States."[97]

Rather, to give effect to those sanctions, the act defines "Indian" as "any individual who is a member of an Indian tribe, or . . . is certified as an Indian artisan by an Indian tribe."[98] As for the phrase "an individual who . . . is certified as an Indian artisan by an Indian tribe," the legislative history shows that Congress intended that phrase to mean "any individual who, although not a member of an Indian tribe, is certified by that tribe to be of the tribe's lineage."[99] Consistent with the statute's broad deference to tribal self-determination in the act's definition of "Indian" for purposes of the act's protective provisions, the Department of the Interior promulgated conforming regulations in 1996.[100] Like the text of the act, those regulations specify no particular minimum blood quantum requirement at all for an individual to be considered an "Indian" or an "Indian artisan" under the act. Instead, the federal regulations specify simply that an "Indian artisan" must be of the certifying tribe's lineage.[101] In this way, the Indian Arts and Crafts Act wisely guards against the otherwise inevitable eventuality of *non-Indians who are not members of any Indian tribe* presuming to qualify as "Indians" within the meaning of the act—an eventuality that would subvert, of course, the act's core purpose of "prevent[ing] the passing off of non-Indian produced goods as Indian produced."[102]

Like Churchill, Jaimes-Guerrero, too, has purported to provide her readers with information about the Indian Arts and Crafts Act, and, predictably, her treatment of the subject reads like a first draft of Churchill's substantially similar script—right down to the lockstep distortions of fact concerning the act's contents. In decrying the act as "[g]rotesque[]" and an "example of the contemporary reassertion of eugenics principles in federal Indian identification policies,"[103] Jaimes-Guerrero interjects the following "summary" of the act's substantive provisions:

> [T]he statute legally restricts definition of American Indian artists to those possessing a federally issued "Certificate of Degree of Indian Blood"—derogatorily referred to as "pedigree slips" by opponents[104]—or those certified as such by "federally recognized tribes" or the "Alaska Native Corporation." Excluded are not only those who fall below blood-quantum requirements, but anyone else who has, for politico-philosophical reasons, refused to cooperate with federal pretensions to define for itself who will and who will not be considered a member and citizen of a recognized indigenous nation.[105]

Despite Jaimes-Guerrero's histrionic assertions, the Indian Arts and Crafts Act makes no reference at all to any "Certificate of Degree of Indian Blood," nor does the act refer to any such thing as "the 'Alaska Native Corporation,'" nor does it establish any minimum blood quantum requirement for purposes of implementation. Indeed, none of these terms—"blood quantum," "Alaska Native Corporation," "Certificate of Degree of Indian Blood"—appears anywhere in the text of the statute, in the statute's legislative history, or in the administrative regulations promulgated for implementing the act.[106] Like Churchill, Jaimes-Guerrero simply has invented all these purported details about how the Indian Arts and Crafts Act "legally restricts definition of American Indian artists" in order to disparage Indian tribes and mislead the public about the contents and meaning of this important pro-Indian and anti-fraud legislation.[107]

CONCLUSION

What harmonizes Churchill's and Jaimes-Guerrero's misrepresentations of the Indian Arts and Crafts Act with their fabrications concerning the General Allotment Act is a shared predilection for fomenting confusion and ignorance in non-Indians' impressions about the pressing legal and political issues facing Indian tribes in the quest for tribal survival, self-determination, and enduring sovereignty in the modern world. As I have suggested elsewhere,[108] this kind of confusion and ignorance puts tribes in peril with each new effort to advance in tribes' five-centuries-long struggle for social justice; for as Felix Cohen observed a half century ago, "confusion and ignorance in fields of law are allies of despotism."[109] And for Indian people, subjection to despotism seldom lags far behind public acceptance of disparaging falsehoods concerning the unique needs of Indian tribes as those needs have emerged and evolved in the course of tribes' historic and continuing relationship with the United States government.

In *A Little Matter of Genocide,* Churchill has this to say about his scholarly efforts:

> Throughout the book, I have gone out of my way to provide what Noam Chomsky has called "rich footnotes." The reasons for this are several, and devolve not merely upon the unusual scholarly fetish with indicating familiarity with "the literature." I *do* believe that when making many of the points I've sought to make, and with the bluntness which typically marks my work, one is well-advised to be thorough in revealing the basis upon which they rest. I also believe it is a matter not just of courtesy, but of ethics, to make proper attribution to those upon whose ideas and research one relies. Most importantly, I want those who read this book to be able to interrogate what I've said, to challenge it and consequently to build on it. The most expedient means to this end is the provision of copious annotation, citing sources both pro and con.[110]

These words echo an earlier bit of advice from *Struggle for the Land*:

> Readers are urged to follow up with readings from the abundant notes. In this way, perhaps we can at last arrive at a common understanding of our common situation, the common peril which confronts us all, and a common strategy by which to eliminate it. It is, after all, our collective future which is at stake.[111]

Of course, the scholarly writings of Churchill and Jaimes-Guerrero *are* "rich," in a sense—"rich" with distortions of law, policy, and history, "rich" with subterfuge and evasion, "rich" with vicious propaganda for obstructing Indian people's efforts to secure all the respect, compassion, and support that Indian tribes deserve in the modern world. Thus, it is no small irony that Churchill himself urges readers to "follow up" and "interrogate" the "points" in his writings in pursuit of "the basis upon which they rest." For only by doing so can readers come to appreciate how Churchill's and Jaimes-Guerrero's writings really measure up as "a matter . . . of ethics"—or how they give us pause to ponder indeed "the common peril which confronts us all."

APPENDIX

Full Text of the General Allotment Act of 1887 [Act of February 8, 1887, ch. 119, 24 Stat. 388]

CHAP. 119.—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the