14 Alfred Crosby, *The Columbian Exchange: Biological and Cultural Consequences of 1492* (Westport, Conn.: Greenwood, 1972). Within five years of the arrival of Europeans, nine out of ten Americans were dead of diseases ranging from the common cold to smallpox. A contemporary account of the North American part of the holocaust, which puzzled the whites almost as much as it terrified the Indians, is in Thomas Harriot’s *1588 Briefe and True Report of the New Found Land of Virginia*.

15 The full citation, from 1984, is “who controls the past controls the future; who controls the present controls the past.” This is the Party’s slogan.

16 Todorov interprets the same phenomenon differently, suggesting that what the Aztecs preserve through the invention of the omens is a meaningful past, demonstrating the orderliness of their universe by having it forecast its own end. I am suggesting on the contrary that what is safeguarded in the omens is the future, that is, after the end of their universe, the possibility of an ongoing orderliness however horrific the order.

17 One of the most problematical aspects of the Todorov account is its failure to incorporate any effects from the historical process itself of the conquest. The Spanish learn to see others as others, but this is already implicit or anyway potential in Spanish culture; the Aztecs do not learn about otherness and that is also implicit in their culture. The events and experiences of the conquest itself dramatize and illustrate, but they do not really inform, let alone form.

18 By “common ground” here I intend something quite different from “bridge.” Bridging two cultures emphasizes their distinctness while on the contrary I want to sketch their interactions. I am once again grateful to Arkady Plotnitsky for suggesting this distinction.

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Terms of Assimilation

Legislating Subjectivity in the Emerging Nation

In the nineteenth-century United States, debates concerning the status of indigenous tribespeople and slaves register unresolved legal conflicts that troubled claims of national unity. Two Supreme Court cases—*Cherokee Nation v. Georgia* (1831) and *Scott v. Sandford* (*Dred Scott*, 1857)—in particular demonstrate the genesis of these debates in the territorial expansion that similarly added urgency to the potent issue of states’ rights. Both cases attempt to legislate the disappearance of the “Indians” and the “descendants of Africans,” respectively, by judging them neither citizens nor aliens and therefore not legally representable. In so doing, however, these cases call attention to the symbolic processes through which the United States constitutes subjects: how Americans are made. The Courts’ decisions turn the Cherokee and slaves into uncanny figures who mirror the legal contingency—and the potential fate—of all subjects in the Union, a fate made all the more plausible by the instability of the Union and the tenuousness of national unity.

Efforts to promote national unity did not originate in the nineteenth century. Nations typically derive their legitimacy from a unity that is presumed to give rise to an independent political entity; Thomas Jefferson’s “one people,” for example, declares the colonies’ independence from England. The Declaration of Independence must not only convert kinship ties into “political bands,” a connection that can be “dissolved,” but also political alliance into cultural identification, a more enduring connection. Rhetorical
strategies designed to promote a collective identity emerge with particular clarity in Congress’s emendations of Jefferson’s draft. In the edited version, for example, the king incites the suggestively vague “domestic insurrections” rather than the more problematic “treasonable insurrections.” “Treasonable” names a crime committed against an independent political entity, a charge that countermands the Declaration’s claims to be calling forth such an entity. At the same time, “treasonable” too nearly calls attention to the colonists’ own treasonous activities—and therefore to their political ties with England. “Domestic,” on the other hand, lays claim only to a locale, although its resonance with “home” suggests a familial collectivity. By implication, the colonies form a homeland that predates and justifies the political entity. “Domestic insurrections” has the added advantage of referring at once to the uprisings of British Loyalists and of slaves. Thus Congress excises a lengthy passage in which Jefferson, assailing the king for inciting slave rebellions, raises the hotly contested issue of slavery.

The Declaration must point the way to an ongoing association among the “one people” who are renouncing the former ties. In the last paragraph, Jefferson’s “good people of these states” becomes the Declaration’s “good people of these colonies,” and it is from these “good people” that the document derives its authority to turn those colonies into “free & independent states.” The Declaration defines the “one people” through contrasts—with the English, for example, or with Loyalists or with the “merciless Indian savages” whose hostility is allegedly encouraged by the king. But once the political bonds are dissolved, what new ones will be put in their place? Who will comprise the “one people” of the emerging political entity? And how can it provide for an expansion—through territorial acquisition or through immigration—that will not challenge that unity?

At stake in both Supreme Court cases is, quite literally, the fate of the Union, the status of the political entity constituted in the name of the “people.” Debates surrounding the extension of federal law into unincorporated territories generate both cases. Cherokee Nation concerns Georgia’s right to violate federal treaties and extend its legislation into Cherokee territory contained within the state’s borders but exempt from state law. Dred Scott considers the status of slaves taken to dwell for an extended period in free territory. Both cases, therefore, involve a conflict between state and federal law, and both immediately precede federal crises—the Nullification Crisis of 1832–33 entailing South Carolina’s right to nullify the federal Tariff of 1832, and the sectional conflicts leading to the Civil War. In the liminal spaces of territories neither foreign nor quite domestic, legal ambiguities resurface.

What begins as a question of territoriality ends in the Cherokee’s and Dred Scott’s exclusion from legal and social representation as the Courts strive to resolve or obscure those ambiguities. But the decisions in both cases disclose as much as they cover up when they make available the conventionality of the natural rights through which citizenship and, by implication, I will argue, cultural subjectivity is constructed. As G. Edward White also argues in his detailed analysis of Cherokee Nation, the legal treatment of both the indigenous tribes and the slaves profoundly troubled the concept of natural law—particularly the rights to own and inherit property, including property in the self. The dispossessed subjects thus embody—or disembody—an important representational threat: human beings to whom natural property rights do not extend. The rhetoric of erasure evoked to justify this exclusion images the rhetorical process of the translation of a subject into a citizen (largely a rights discourse). Ironically, the legal unrepresentability designed to deflect the political issues itself ushers in the return of the cultural repressed, what is entailed in (and covered up by) the making of Americans. By positing human beings whom the law cannot represent, in other words, the Marshall and Taney courts actually return to the (repressed) legal ambiguities and, by extension, to the legal genesis of United States subjectivity. Positive law distinguishes among subjectivities, but all subjects depend on that law for their natural rights. I invoke the uncanny here because I want to stress that the threat that the indigenous tribespeople and descendants of Africans come to pose to the anxious confederation inheres at least as much in their resemblance to as in their differences from other cultural subjects.

Cherokee Nation demonstrates significant contradictions within both states’ rights and nationalist arguments. Since the case turns on Georgia’s violating federal treaties by legislating within Cherokee territory, which is itself circumscribed by the state of Georgia, the relative authority of state and federal legislation is in question. The interesting twist of the case is that an actual victory for Georgia entails the court’s upholding the integrity of the state against the coexistence of sovereign governments within shared boundaries, which coexistence in effect echoes the states’ rights argument. Conversely, a victory for the national government conceptually upholds that principle of coexistence. At deeper issue, then, is just what kind of entity the “Cherokee Nation” describes.
The decision of the Court, as explained by Chief Justice Marshall, turns on the unique "condition of the Indians in relation to the United States [which] is, perhaps, unlike that of any other two people in existence." Marshall rejects the designation "foreign" that characterizes "nations not owing a common allegiance" when determining the relation of the Indians to the United States. The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. It may well be doubted, whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. (CN, 11–12, emphasis added)

The representational bind that Marshall expresses grows out of the expanding borders of the United States, an expansion that brings the Declaration's "merciless savages" on "our frontiers" within national boundaries. Once used to delineate geographical boundaries, these "savages" threaten to define the limits of a natural rights discourse. Marshall responds with an erasure marked by the (elided) subject of the passive construction in the phrase "is admitted." He assumes a consensus that has already refused the tribal nations representation: "In all our maps ... it is so considered." The "Indians" are comprehended within an American discourse just as the Cherokee nation is circumscribed by Georgia's boundaries, a colonizing gesture that inscribes both collective identity and geographic totality. While national policy, articulated especially in treaties, had distinguished among the tribal nations, many legal cases had obscured such distinctions in the service of the cogently articulated national terms into which the growing number of immigrants and rapidly expanding national boundaries could be readily translated. By the 1830s, the terms are set for the simultaneous and often contradictory policies toward the indigenous tribespeople: assimilation (in the service of appropriations of both land and identity), or removal. In both instances, the pretext of United States legislation of the indigenous tribespeople inheres in the struggle to construct a collective identity, "We the People," that sanctifies the independent political entity uttered into existence in the founding texts.

The expanding borders of the nation generate a great deal of legal activity, but Cherokee Nation and Dred Scott demonstrate the larger relevance of property disputes to the construction of subjectivity. In a government based on what C. B. Macpherson calls "possessive individualism," the natural right to own property is a critical component of the definition of personhood. Both Supreme Court cases are troubled by competing claims to property that in turn manifest competing definitions of property and personhood in the emerging nation. The legal unrepresentability of nonwhite subjects upon which Cherokee Nation and Dred Scott resolve justifies the exclusion of these subjects from the right to own property and, by implication, from personhood.

At the end of one of the two dissenting opinions in Dred Scott, Justice Benjamin R. Curtis asserts the symbolic—and representational—function of the law through its creation of property: "Without government and social order there can be no property; for without law, its ownership, its use and the power of disposing of it, cease to exist, in the sense in which those words are used and understood in all civilized States." Here the law names property into existence by standardizing linguistic structures if not language itself. The material fact of property is a function of owning and bequeathing, actions and relations that the law governs. The "law," in turn, expresses the terms that make experience comprehensible. By implication, the subject's desire to comprehend, to make experience meaningful, underwrites his/her obeying the law. Curtis depicts the law as a rhetorical-legal discourse that defends the subject against an implied anarchy that threatens both the physical body and meaningful experience, hence subjectivity itself.

Efforts to legislate kinship in the early Republic explain the more symbolic importance of inheritance to cultural identity. The Naturalization Act of 1790 explicitly adds citizenship to the terms of property and inheritance governed by the patronym. This act not only "naturalizes" the children ("under the age of twenty-one years") of naturalized parents and extends the (natural) boundaries of the nation to include children born of citizens abroad, but it also very specifically provides "[t]hat the right of citizenship shall not descend to persons whose fathers have never been resident in the United States" (my emphasis). By the 1830s, the trope of the family commonly represents the Union. Accordingly, from the ever more strict and complex Naturalization and Alien and Sedition Acts to the 1819 law requiring annual records of immigration; from the American Society for Colonizing the Free People of Color in the United States (founded in 1817) to the 1819 Indian Civilization Fund and the Indian Removal policy (formalized by James Madison in 1825 and made an act under Andrew Jackson in 1830), the logic of official legislation and
de facto policies of this period protects personhood and property from threatened disruptions of both metaphysical and territorial inheritance. Miscegenation legislation during these years, as Eva Saks shows, simultaneously protects a social institution that governs "the transmission of property" and "formalizes the parties' social relation."8

Even in legislation not specifically prohibiting interracial marriage, kinship metaphors express the anxiety evoked by nonwhite subjects in the early Republic. Justice William Johnson, in a consenting opinion in Cherokee Nation, pointedly excludes the Indians from "the family of nations" (CN, 14, 17, 18) and, consequently, from representation within the United States legal system and even, by implication, from the human family. Johnson, in fact, deconstructs "Indians" back into tribal affiliations to support his contention that "every petty kraal of Indians, designating themselves a tribe or nation, and having a few hundred acres of land to hunt on exclusively... should, indeed, force into the family of nations, a very numerous and very heterogeneous progeny" (CN, 17).

The catalog of anti-amalgamation laws (directed as much against "Indians" as "descendants of Africans") with which Chief Justice Roger Taney begins his opinion in Dred Scott similarly excludes descendants of Africans from "the whole human family, ... civilized governments and the family of nations" (DS, 702–3). Taney pushes the nation's natural basis through the common currency of body and family tropes:

citizens in the several States, became also citizens of this new political body: but none other; it was formed by them, and for them and their posterity, but for no one else. ... It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power ... was to extend over the whole territory of the United States. (DS, 701, emphasis added)

Taney uses these metaphors to suggest the threats posed by nonwhites to the genealogy of a white "family of independent nations" (DS, 701). The anti-amalgamation laws "show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery" (DS, 702); Taney's passive voice invokes what Robert Ferguson calls "the rhetoric of inevitability," establishing history itself paradoxically as a justification for and outgrowth of the laws of nature.9 Marshall's consistent use of passive voice similarly constitutes a legal strategy in which subjectivity is rhetorically subordinated to a historical narrative that, circularly, (re)constructs it.

The family archetype evokes both the actual inheritance and the genealogical relations that legally govern it. Cherokee Nation enables at once the appropriation of land and the delineation of "the American people." The defense in an earlier case, Johnson and Graham's Lessee v. William McIntosh (1823), had appealed to the putative lack of a tribal concept of private ownership to obviate the validity of the plaintiffs' claim to contested land: "as grantees from the Indians, they must take according to their laws of property, and as Indians subjects [sic]. The law of every dominion affects all persons and property situate within it...; and the Indians never had any idea of individual property."10 The concentric circles of this argument geometrically articulate a need to circumscribe tribal property relations within an American discourse of property: the plaintiffs are within Indian dominion for the sake of their purchase, but the Indians are, in turn, contained within United States definitions of property. The United States government's explicit policy toward the Indians, from the aforementioned 1819 Indian Civilization Fund to its fullest articulation in the 1887 Dawes Act, had at its core the civilization (dissolution) of tribal societies through the institution of private property.11

Circumscribed within the Euro-American community, a situation that provokes both Cherokee Nation and the later Worcester v. Georgia (1832), tribal society presents an ongoing challenge to the physical and ideological representations of the Union and its subjects. The boundaries separating a "civilized," or (re)presentable, person from a "savage" are, therefore, directly at stake in these cases. Where citizenship is defined through the natural right to own property, and, following Locke, the most basic expression of this concept rests in the citizen's self-ownership, members of tribes and slaves (extending, at least in Dred Scott, to all "descendants of Africans") constitute two ways of not owning the self: the former in the tribal absence of an "American" concept of private property, and the latter in their being owned by someone else.12

Rhetorically, indigenous tribespeople and descendants of Africans are fashioned into monsters that fit Frantz Fanon's description of "the real Other" whom the "white man... perceive[s] on the level of the body image, absolutely as the non-self—that is, the unidentifiable, the unassimilable." But the exclusion intended to foster a sense of homogeneity among white americans ironically raises the more dramatic specter of the status of any "American" self without the already tenuous cultural identity. White America could see its own alterity, or alienation, reflected in the fate, and often quite literally in the face, of the racialized other.13

The Marshall Court seeks resolution to this dilemma in erasure, as
in Justice Henry Baldwin’s declaration that “there is no plaintiff in [the Cherokee Nation] suit” (CN, 21). This ominous (and prophetic) elision rests in the Marshall Court’s reading of

the eighth section of the third article [of the United States Constitution] which empowers congress to ‘regulate commerce with foreign nations, and among the several states, and with the Indian tribes.’ In this clause, they are as clearly contradistinguished, by a name appropriate to themselves, from foreign nations, as from the several states composing the Union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the application distinguishing either of the others be, in fair construction, applied to them. The objects to which the power of regulating commerce might be directed, are divided into three classes—foreign nations, the several states, and Indian tribes. (CN, 12)

The Court’s reliance on the wording of the Constitution makes the Cherokee’s legal representation contingent on their textual representation. When Justice Smith Thompson, in his dissenting opinion, labels the Court’s reading “a mere verbal criticism,” he unwittingly shakes the rhetorical foundation on which, as Justice Curtis will later suggest, society and subjectivity are constructed. Thompson returns to the original act of naming to counter the “argument . . . that if the Indian tribes are foreign nations, they would have been included, without being specially named, and being so named, imports something different from the previous term ‘foreign nations’” (CN, 41). He offers two alternative readings of the Constitution’s phraseology: stylistic, “avoid[ing] the repetition of the term nation”; and practical, allowing Congress to deal separately with each tribal nation. Again unwittingly, however, Thompson taps into precisely the anxiety over heterogeneity that Johnson has evoked in “every petty kraal of Indians.” At stake is the colonizing gesture that naturalizes the land as it makes the many one.

Neither Curtis nor Thompson intends to deconstruct the law. On the contrary, they offer essentially nationalist arguments, using the logic of the Constitution’s regulations of commerce, currency, and naturalization to bring the individual states of the Union within the terms of a common law. Curtis especially argues for a common vocabulary of private property that will Americanize all who accept its terms. This assimilation, however, means cultural erasure rather than integration, and it entails a proportionately greater sacrifice for non-European cultures. The dissenting arguments address whether or not, rather than how, non-Europeans can and ought to become “Americans.” Curtis wants to apply, not reform, the law, and his opinion must be understood as a response to Taney’s demonstration, through an appeal to the anti-amalgamation laws with which he opens his majority opinion, that the father is not willing to give his name to his darker-skinned (or, more consistently, -blooded) progeny.

Cherokee Nation is finally about the incomprehensible hole in the map within the perimeters of Georgia. It is in fact an increasing Cherokee nationalism, evidence of the Cherokee’s plan to remain indefinitely in possession of the disputed territory, that precipitates Georgia’s controversial legislation. Debates within the Cherokee community had entailed whether nationalism could best be expressed in traditional Cherokee or in United States terms, but it is the traditionalists’ defeat, and the adoption of a Cherokee Constitution, to which Georgia would most blatantly respond. The 1827 Constitution of the Cherokee Nation, spearheaded by the mainly interracial (mixed Cherokee and white parentage) elite, signaled a victory for a Cherokee nationalism simultaneously modeled on and opposed to United States nationalism. Andrew Jackson’s political ascendancy in the 1820s encouraged, and was even largely predicated on, a federal policy that replaced the aforementioned ambivalence with a new and determined program of removal. The victorious Cherokee nationalists hoped that a demonstration of their “civilization,” this parallel Constitution for example, would ensue their right to remain on their land. While United States policy changes guaranteed their ultimate removal, the trends signified by the Cherokee Constitution precipitated events that may actually have expedited it.

The putatively Americanized Cherokee, many of whom had become farmers and even slaveholders, evoked anxious responses in their neighbors, as typified by the director of the Office of Indian Affairs at this time, Thomas L. McKenney: “They seek to be a People. . . . It is much to be regretted that the idea of Sovereignty should have taken such a deep hold of these people.” His common nineteenth-century use of “a People” to express “a nation” suggestively articulates the rhetorical underpinnings of personhood’s contingency upon national identity during this period. The public outrage, which McKenney echoes, stems from the anxieties exacerbated by the profound threat of Cherokee separatism to the collective identity. The Cherokee’s becoming like but not of the United States political entity, mirroring without acceding to its claims, seems to threaten the terms of that identity. And the threat is literally embodied by the “mixed-bloods” who trouble both white exclusionists and integrationists in their physical as well as legal uncanniness.

The particular nature of the threat posed by the Cherokee Constitu-
tion is complicated in precisely those ways in which, as Homi Bhabha suggests, "mimicry is at once resemblance and menace." As a colonial strategy, an imposed "mimicry" mandates a reformed, recognizable Other, as a subject of a difference that is almost the same, but not quite" (MM, 126), which is also to say, "almost the same, but not white" (MM, 130). In response to an ideology that envisions Americans as cultivators, some Cherokee take up hoes and crosses, purchase slaves, and adopt a Constitution, hopefully preserving whatever indigenous culture can elude the disciplinary gaze. But the nationalistic Cherokee, by imitating rather than by assimilating or by otherwise disappearing, recontextualize the logic of United States nationalism. A Cherokee nation would ironically recapitulate the relation of the pre-Revolutionary colonies to England: "imperium in imperio (a state within a state)," conceptually complicating ideas of American exceptionalism, absorptiveness, and republicanism. It is also worth reiterating that Cherokee Nation introduced complications concerning the volatile federalist debates. Only blatant racism—specifically, the assertion that the white race alone could be capable of civilization—could resolve the contradictions, and the Cherokee's mimicry (civilization in United States terms) directly countermands those assertions.

Marshall's attempt to express the Cherokee's ambiguous relation to the United States depicts the untenability of this positioning: Marshall offers an apparent compromise that works hierarchically to erase any slippage in Cherokee Nation: "They may be denominated domestic dependent nations. ... [T]heir relation to the United States resembles that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power, appeal to it for relief to their wants; and address the president as their great father" (CN, 12). This rhetoric echoes the earlier colonial legislation of indigenous tribespeople that, as the defense argued in Johnson v. McIntosh, "treat[ed] them as an inferior race of people, without the privileges of citizens, and under the perpetual protection and pupilage of the government" (JGL, 251). Marshall responds to the aggressive removal policy of the Jackson government with a paternalism that paradoxically withholds the father's name from the adopted children.

Marshall's domestic fantasy had been effectively dramatized by the future abolitionist, Lydia Maria Child, in Hobomok (1824). In her literary work, Child can play out a scenario that Marshall can only imply in a legal decision. Yet their efforts to resolve an ideological predicament are strikingly similar. Set in colonial New England, the novel uses its white female protagonist's ill-advised marriage to Hobomok, chief of a neighboring tribe, to accomplish her Americanization. The fate of Charles Hobomok Conant, son of Hobomok and Mary Conant and adopted son of Charles Brown, accomplishes for a fictitious individual what Marshall rhetorically tries, unsuccessfully, to do for the tribal nations. The novel conscientiously depicts Mary's consent to marry Hobomok as the unfortunate outcome of her maddening grief at reports of the death of her Royalist fiancé, Charles Brown, and anger at her father's unrelenting fanaticism. When she awakens to the consequences of her impulsive behavior, Mary redeems herself for her early nineteenth-century audience by accepting her exile and renouncing her inheritance. Although her father "conjure[s] her not to consider a marriage lawful, which had been performed in a moment of derangement" and enjoins her to return both to him and to the inheritance bequeathed to her by a beloved paternal grandfather, Mary "urg[es] him to appropriate her property to his own comfort" since "her marriage vow to the Indian was [no] less sacred, than any other voluntary promise." Mary must stay married to Hobomok because of a contract that cannot be declared illegal. Her inheritance, on the other hand, can be invalidated by her relinquishing a legal identity that is contingent upon her (consensual) membership in a community in which those laws apply. Those laws, in other words, hold between the tribespeople and the government but have no weight within tribal society (as within the Cherokee nation). Only Hobomok can release her from her contract.

Hobomok, however, turns out to be an appropriately cooperative noble savage. When Charles Brown appears, almost as though reborn, Hobomok concedes his entitlement to both Mary and the land and selflessly agrees to "go far off among some of the red men in the West. They will dig him a grave, and Mary may sing the marriage song in the wig-wam of the Englishman" (Hob, 139). His emigration/death speaks more to the ambiguities of government policy than to any deep wish of migrating tribes, but, most importantly, his self-abnegation Americanizes those it leaves behind. Mary can no longer return to England as she had wished because, she explains, "[m]y boy would disgrace me, and I never will leave him; for love to him is the only way that I can now repay my debt of gratitude" (Hob, 148). Instead, she must remain in the New World to reconstruct the American family both by reconciling with her Puritan father and by reconstituting Charles Hobomok.

The significance of Hobomok and his son inheres in the reconstitution of the family according to the ideology of the early nineteenth century. Mary and Hobomok's amalgamation reconciles the austere Mr. Conant to Charles Brown, and her return re-forms her rigid father into an
The exercise of the power of self-government by the Indians, within a state, is undoubtedly contemplated to be temporary. ... [A] sound national policy does require, that the Indian tribes within our states should exchange their territories, upon equitable principles, or eventually consent to become amalgamated in our political communities. (WG, 400)

The use of “amalgamated,” especially in light of the anti-amalgamation legislation, is startling here, although, like “domestic dependent nations,” it subtly articulates the subtext of the legislation. Just as women were disenfranchised by marriage, so the “Indians’” amalgamation would necessarily entail a surrender of any property held in the name of a tribal affiliation. In light, moreover, of anti-amalgamation laws, even the most enlightened official policies did no more than advocate a national forgetting, such as the tacit agreement that allows Charles Hobomok to pass in the name of his adopted father. Of course, the exception of an individual whose features obscure his bloodline could certainly not hold true for an entire tribe. Hence, the national fairy tale of Hobomok and the failure of Marshall’s efforts at peaceful resolution.

It is, then, as a collective entity that the tribe (and, by extension, each of its members) must cease to exist. And it is Worcester v. Georgia that, through the uncanny resemblance, most pointedly depicts the untold history of the fate of the racialized other within an American legal discourse as an extension of the fate of the American self within an American collective identity. Significantly, the federal intervention called for by the plaintiff in Cherokee Nation is conferred by the court in Worcester, where the case now involves “the personal liberty of a citizen” (WG, 364). The court’s apparent reversal, which is actually not quite a reversal, of the Cherokee Nation decision attests to the national stake in maintaining the apparent priority of “the personal liberty of a citizen.” The case rules on the claim of the plaintiff, Samuel A. Worcester, of rights violations—including wrongful detention—on the part of the state of Georgia, and it revolves around the constitutionality of an act passed by the Georgia legislature on December 22, 1830, claiming state jurisdiction over tribal territory. Georgia charges Worcester and a small group of fellow missionaries with residing in Cherokee territory without a permit and without taking “an oath to support and defend the constitution and laws of the state of Georgia” (WG, 350). Worcester’s defense calls forth the federal treaties that uphold Cherokee sovereignty within established boundaries. Not only is there now a “plaintiff in this suit,” but the case, which links the American citizen’s “personal liberty” to tribal land rights, comes dangerously close to demonstrating a correlation between the legal representational invisibility of the racialized other and the necessary self-abridgment of even the most apparently representative Christian white male within a collective identity. Hence the ruling against Georgia, although in favor of Worcester rather than the Cherokee.
The threat of the Cherokee’s mimicry, which largely inheres in the conceptual resonance between an American citizen’s “personal liberty” and Cherokee land rights, is fully enacted in the Cherokee Constitution. Land distinguishes the Cherokee nation from the original Cherokee. The first section of Article I spells out the “boundaries of this nation,” which do not encompass the Cherokee who had migrated west in accordance with United States government colonization programs—who had, that is, allowed themselves to be translated out of Georgia’s boundaries. The second section defines the land as the nation’s exclusive property:

The sovereignty and Jurisdiction of this Government shall extend over the country within the boundaries above described, and the lands therein are, and shall remain, the common property of the Nation; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made; or may rightfully be in possession of them: Provided, that the citizens of the Nation, possessing exclusive and indefeasible right to their respective improvements, as expressed in this article, shall possess no right nor power to dispose of their improvements in any manner whatever to the United States, individual states, nor individual citizens thereof; and that whenever any such citizen or citizens shall remove with their effects out of the limits of this Nation, and become citizens of any other Government, all their rights and privileges as citizens of this Nation shall cease.20

The passage articulates the distinctly Lockean concept of entitlement (“ownership”) based on work (“improvements”). But this proprietorship is contingent upon membership in the collective national identity.21 Since this land is explicitly indefeasible, it cannot, strictly speaking, be said to belong to any single proprietor.

In mimicking the de facto United States policy of contingent entitlement, the Cherokee Constitution exposes the conventionality of inalienable rights. First, it rearticulates (with significant slippage) the decision in Johnson v. McIntosh, which involves the dispute over the title to land that the plaintiffs had purchased from the Piankeshaw Indians and that the United States had granted to the defendants. Marshall’s uncontested opinion upholds the defense counsel’s appeal to “the uniform understanding and practice of European nations, and the settled law, as laid down by the tribunals of civilized states, [that] deny[s] the right of the Indians to be considered as independent communities, having a permanent property in the soil, capable of alienation to private individuals” (JGL, 565, emphasis added). The brief report of the defense repeats “alienation” two more times: “the extent of their right of alienation must depend upon the laws of the dominion under which they live” and “the Indian title to lands [is] a mere right of usufruct and habitation, without power of alienation” (JGL, 567). The defense counsel invokes Locke, among other sources, to naturalize the inalienable rights of the indigenous tribespeople to their land: “By the law of nature, they had not acquired a fixed property, capable of being transferred” (JGL, 567).

The Cherokee Constitution signals the Cherokee’s adoption of the concept of provisional land rights, but in the service of Cherokee rather than United States nationalism. That Constitution, however, makes apparent that these rights are the result of positive rather than natural law. A similar implication plays throughout Marshall’s rhetoric:

As the right of society to prescribe those rules by which property may be acquired and preserved is not, and cannot, be drawn into question; as the title to lands, especially, is, and must be, admitted, to depend entirely on the law of the nation in which they lie; it will be necessary, in pursuing this inquiry to examine, not simply those principles of abstract justice, which the Creator of all things has impressed on the mind of his creature man, and which are admitted to regulate, in a great degree, the rights of civilized nations, whose perfect independence is acknowledged, but those principles also which our own government has adopted in the particular case, and given us as the rule for our decision. . . . [If the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned. (JGL, 572, 590, emphasis added)]

Marshall insists on the irrefutability of established laws, especially governing property. In the interest of the “categorical authority” of the law, he blurs the distinction between the “principles of abstract justice” and “those . . . which our own government has adopted,” a distinction upon which he ostensibly insists.22 By accepting the concept of provisional land rights but implicitly rejecting its genesis in natural law, the Cherokee Constitution restores the questioning agent that Marshall’s passive voice would erase.

The effect of the mimicry extends, more importantly, to the concept of inalienable rights. In its strictest sense, as the Johnson decision makes apparent, inalienability countermands the agency of the subject itself as well as of the larger community. The Indians cannot “alienate”—that is, sell—their land because they do not own it. This context adds a new and troubling perspective to the politically fundamental concept of inalienable rights. Jefferson intends a natural law argument when he asserts the inalienability of certain individual rights in the Declaration.
Nevertheless, rights that cannot be alienated are not, strictly speaking, owned by the individual. The rights protected by United States law are, technically, the property of American society conferred upon subjects recognized by United States law and who in turn (at least in theory) accept the terms of that law. Like the Indians’ property, they are more accurately rights of proprietorship than (alienable) possessions. Hence Mary Conant’s automatic forfeiture when she consents to join Hobomok’s world. Natural rights are rights that inhere in a certain conception of personhood, but that conception—and those rights—extend only to certain persons. Personhood is itself conceptually constructed by convention. Cherokee Nation and Dred Scott demonstrate the contingency of inalienable rights upon a government that chooses to define and protect them as such; they also reveal persons within that government’s borders to whom those rights do not extend.

The political complexity of these cases lies in the many ways in which they threaten to represent both the legal construction of identity in rights discourse and the shifting basis of the authority to confer and protect those rights. In his concurring opinion in Worcester, Justice McLean tries to cover up the justification for the claims, made by proponents of states’ rights, “that the federal government is foreign to the state governments; and that it must, consequently, be hostile to them.” McLean argues that “foreign” and “state governments . . . proceed[] from the same people,” and that the people of the state are also “the people of the Union” (WG, 386). Yet no amount of insistence on national unity can obscure the fundamental question of the case that McLean himself must finally ask: “which shall stand, the laws of the United States, or the laws of Georgia?” (WG, 391).

In the shifting field of inquiry, from the status of “the Cherokee Nation” (and hence, Cherokee’s legal representability) to the “personal liberty” of white male United States citizens, the nature of citizenship—such as, more fundamentally, personhood—in the Union emerges as the anxious inquiry of these cases. But the anxiety overtakes the inquiry, which is in turn displaced or suppressed. When, for example, the Nullification Crisis in South Carolina helps turn the Worcester decision into a threat to the Union, and to the authority of the Court, both the Court and the plaintiffs demonstrate a willingness to compromise.\(^{23}\) Although the South balked at the economic nationalism signaled by the protective tariffs in the 1820s, and although John C. Calhoun emphasized an analogy between South Carolina’s right to nullify federal tariff regulations and Georgia’s right to supersede federal treaties with indigenous tribes, Indian legislation generally inspired more obvious divisions among partisan rather than sectional factions. What may at times have seemed to be an East/West division was complicated by an emerging nationalism. Between Cherokee Nation and Dred Scott, however, these debates would more clearly reinscribe “We the People” into two distinctly competing sectional narratives.

Divergent national narratives, in other words, coalesce into two dominant narratives, as the related issues of slavery and state sovereignty inescapably force constitutional ambiguities to the fore in the antebellum United States. The Taney Court must therefore resolve what the Marshall Court can still try to obscure. Taney’s opinion, which becomes the Court’s official opinion, returns to the language of eighteenth-century political discussions to maintain Dred Scott’s legal unrepresentability.\(^{24}\) Excluding descendants of Africans from “We the People,” Taney insists that the Constitution prohibits their holding federal citizenship while any state precludes them from holding state citizenship. Nor, however, are they eligible for alien status. Dred Scott consequently cannot sue for his freedom because he is not and cannot be a citizen of the state of Missouri. Because of the centrality of the issues raised in Dred Scott to the mounting political crisis, however, Taney rules on other controversies touched on by Dred Scott as the case had made its way, in several incarnations, through other courts. Taney’s majority opinion describes a Constitution that prevents the federal government from prohibiting slavery in a territory and that gives a state rather than the federal government jurisdiction over the regulation of domestic institutions, including slavery. Even if Dred Scott could sue in state or federal court, neither his master’s sojourn in the free state of Illinois nor in the territory designated free under the Louisiana Purchase could legitimate his suit for freedom in Missouri. Thus the Taney Court upholds the “squatter sovereignty” of the 1854 Kansas-Nebraska Act and (necessarily) affirms the unconstitutionality of the 1820 Missouri Compromise.

Taney carefully distinguishes between Indians and descendants of Africans. By the late 1850s, the government’s aggressive policy had substantially diminished any significant physical or representational challenge from the tribes. And by 1857, Taney could contrast the legal invisibility of “a negro, whose ancestors were imported into this country and sold as slaves” (DS, 700) with the status of “Indian governments [that] were regarded and treated as foreign governments, as much so as if an ocean had separated the red man from the white” (DS, 700). One must
either question Taney's legal scholarship, or interrogate his willful mis.

This is true that the course of events has brought the Indian tribes within the
limits of the United States under subjection to the white race; and it has been
found necessary, for their sake as well as our own, to regard them as in a state
of pupilage, and to legislate to a certain extent over them and the territory
they occupy. But they may, without doubt, like the subjects of any other foreign
government, be naturalized by the authority of Congress, and become citi-
izens of a State and of the United States; and if an individual should leave his
nation or tribe, and take up his abode among the white population, he would
be entitled to all the rights and privileges which would belong to an emigrant
from any other foreign people. (DS, 700, emphasis added)

No longer a threat, the tribes could now comprise an alien nation, and
their lack of proximity to the white family permits suggestions of their
assimilability. In contrast, each side of the slavery debate invokes the
mulatto to depict the gruesome consequences of the other side's institu-
tions: the threat from within. Black subjectivity evidently presents the
more serious danger in the antebellum United States. The descendant of
Africans registers the uncanniness of the legally unrepresentable subject
perhaps even more forcefully than the member of a tribal nation. "Indian
governments" had represented the collective threat offered by the prox-
imity of an alternative collectivity. A descendant of Africans, in Taney's
narrative, embodies the individual threat of a human being deprived of
choice and self-possession within (but not of) the Union.

Taney's reconstructed historical narrative seeks to legitimate—and
moralize—slavery ("for their sake as well as our own"). At stake is the
states' rights claim that the state rather than the federal government pro-
tects the liberties of all citizens. The majority opinion in *Dred Scott* must
establish the priority of both the master's property rights over the slave's
right to self-possession and the state's right to regulate slavery over fed-
eral legislation.

Taney's narrative must present a government dedicated to the preser-
vation of individual liberty. Inconsistencies within that program must be
rhetorically elided. Accordingly, Taney uses a rhetoric of inevitability to
inscribe Indian removal within the progressive movement, the "manifest
destiny," of the American people. His loose echo of the Declaration of
Independence ("course of human events"; "found necessary") ensures that
the subjection of tribes remains within the terms of the American Revo-

ution, although emigration of these "nations or tribes" (the distinction
is no longer so crucial) has removed the immediate risk of an imperial
analog between the United States and England that, for example, the
Cherokee resemblance to the revolutionary colonies had promoted. The
prosperity of the Union inevitably results in the civilization or removal of
the tribal nations (either way, the passing of tribal cultures). That same
prosperity, on the other hand, extends to slavery, which is consequently
as inevitable and beneficial to all concerned as Indian removal. Both are
the outcome of civilization; hence, the familiar paternalistic rhetoric that
enslaves Africans and their descendants, as it removes tribal cultures, "for
their sake as well as our own."

Whereas Indian removal makes it possible to emblemize (and thus
Americanize) tribal culture, however, the slave remains within United
States culture as a visible symbol of nonpersonhood: neither potential
citizen nor alien. The rhetoric of two southern Justices who concur with
Taney's opinions evinces concern that *Dred Scott* somehow challenges the
argues that the individual's inalienable rights curb Congress's power to
"determine the condition and status of persons who inhabit the Territo-
ries" (DS, 744). Campbell imagines "an American patriot" who contrasts
the European and American systems by affirming

that European sovereigns give lands to their colonists, but reserve to them-
selves a power to control their property, liberty and privileges; but the Ameri-
can Government sells the lands belonging to the people of the several States
(i.e., United States) to their citizens, who are already in the possession of per-
sonal and political rights, which the government did not give, and cannot take
away. (DS, 745)

Inalienable rights here restrict the United States government's rather than
the individual's access, which was also Jefferson's intention. Largely on
the basis of this distinction, the colonies declared their independence.
Campbell, however, uses the "American Government" to conceptualize a
transfer of rights that is regulated by a legal system. That system controls
the distribution of those rights—not unlike the European sovereigns—by
its power to decide exactly who is "already in the possession of personal
and political rights, which the government did not give, and cannot take
away." For Justice Peter V. Daniel, the slave's status as property makes
citizenship unthinkable. Daniel insists that "the power of disposing of and
regulating . . . vested in Congress . . . did not extend to the personal or
political rights of citizens or settlers . . . inasmuch as citizens or persons
could not be property, and especially were not property belonging to the United States" (DS, 735). Americans' self-ownership is evidently at issue in Dred Scott.

The counternarratives offered by the two dissenters, Justices McLean and Curtis, paradoxically maintain slavery's general legality and suggest the challenge that slavery poses to the law. Curtis's reluctance to contest the legality of slavery stems from the New Englander's conservatism. Justice John McLean, on the other hand, manifests a politician's fervency—and his own presidential ambitions. He summons the dangers of the nation's dissolution, posed by slavery, in an effort to save the Union. McLean draws on precedent to "show that property in a human being does not arise from nature or from the common law, but in the language of this court, it is a mere municipal regulation, founded upon and limited to the range of the territorial laws" (DS, 760). This precedent establishes Scott's right to freedom on the basis of his having lived in free territory. But he ambiguously (and ominously) evokes the crux of imposing national crisis in labeling "[t]his decision . . . the end of the law" (DS, 760). To enslave a person is to push the law to its extreme: if a law that turns a human being into property "does not arise from nature," then what, he wonders, stops a government from making "white men slaves?" (DS, 757).

Moreover, the law that creates slaves also, by extension, creates the natural rights that constitute personhood. This is to envision the end, in both senses of the word, of the law.

In the debate over the power of the federal government, each side had to establish itself as safeguarding "the people's" liberty (individual rights). But the focus on individual liberty was, as many argued, inconsistent with the slave's status as a potential citizen. Accordingly, the slave had to be either excluded from the possibility of citizenship or emancipated. Dred Scott manifests the social and legal consequences of the rhetorical elision of the black subject in the haunting possibility of a legally invisible subject.

Within a decade of the Dred Scott decision, Abraham Lincoln would connect the similar rhetorical disappearance of the white subject to the dissolution of the Union in his Second Inaugural Address. Lincoln ends the first paragraph of this brief speech, which looks back to the reconstruction of the Union, ambiguously: "With high hope for the future, no prediction in regard to it is ventured." Dangling modifier and passive voice defer a subjectivity apparently contingent upon the fate—the reconstitution—of the Union. Lincoln similarly constructs three of the four sentences that comprise this paragraph around the passive voice, and the first person—singular or plural—appears only embedded within a clause: "In the wake of a crisis concerning the collective identity, the subject which certainly cannot act, can barely even exist—can only "trust."" What does the deferred subject beg a central question of the conflict: whom does it "belong to the People" include, and, more pointedly, who speaks in their (its?) name? Is the United States itself a plural or singular subject? Lincoln's rhetoric announces his stand; the American subject cannot exist without the Union, in the name of which it is held in trust. The contingency of the subject promotes a personal investment in the fate of the Union, now unambiguously on the way to nationhood.

The questions raised in Cherokee Nation and Dred Scott motivate but are not finally resolved either by Lincoln's rhetoric or the reconstructive strategies it articulates. Instead, they resurface in the anxious efforts to legislate mimicry and difference out of official existence, efforts that emerge from, as they attest to, fundamental contradictions of United States subjectivity. These contradictions are not resolved in the Fourteenth Amendment, which establishes federal and state citizenship for all persons born in the United States, or in the postwar nation. Debates surrounding overseas expansion of the late-nineteenth and early-twentieth centuries evoke renewed concerns for the stability of the nation and the fate of Americans as well as reinvigorated strategies of rhetorical erasure.

In particular, the 1901 Supreme Court case of Downes v. Bidwell forcefully registers the return of the issues (and decisions) of Cherokee Nation and Dred Scott. The case, which explicitly sanctions the nation's right to own territory and legislate over subjects that it does not incorporate, declares inhabitants of United States overseas territories neither citizens nor aliens, hence, again, legally unrepresentable. Although Downes v. Bidwell divides the Court, both sides show marked concern for national stability. Those favoring the decision—and thus legislating imperialism—imagine a territory that is necessary to "the peaceful evolution of national life" but inhabited by a "people utterly unfit for American citizenship." Dissenting justices are equally troubled by the alleged power of Congress to "turn such a territory into "a disembodied shade, in an intermediate state of ambiguous existence for an indefinite period."" In legislating the ambiguous status of (nonwhite) inhabitants of overseas territories, however, the Court creates disembodied subjects who bear witness to the fate feared by both sides.

In Downes v. Bidwell, as in Cherokee Nation and Dred Scott, the perceived threat to national stability (actual or imagined) gives rise to an
almost apocalyptic anxiety over the fate of American subjects. These cases do not interrogate the source of that concern, the rhetoric through which the nation constitutes its subjects, and that concern continues to motivate the creation of subjects who embody precisely that fate. From the judgments of *Cherokee Nation* and *Dred Scott* to Lincoln’s Second Inaugural Address and into the twentieth century with *Downes v. Bidwell*, the disembodied subject continues to haunt the imperial nation. The history of these subjects is a “tale twice-told but seldom written”: the story of subjectivity in the United States.28

Notes

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5 *Cherokee Nation v. the State of Georgia*, *United States Reports*, vol. 30, pp. 1–53; p. 11. Future references are cited in the text as *CN*.

6 Lucy Maddox offers an especially rich analysis of Indian legislation in light of the “persistent otherness of the Indians” (8) who “continued to frustrate white America’s efforts... to include them within the discourse of American nationalism and, concomitantly, within the structure of the country’s laws and institutions” (7) and of how that dilemma shaped the culture of the early Republic. *Removals: Nineteenth-Century American Literature and the Politics of Indian Affairs* (New York: Oxford University Press, 1991).


In “Ronald Reagan, the Movie and Other Episodes in Political Demonology” (Berkeley: University of California Press, 1987), Michael Paul Rogin uses a similar phrase, “propriety individualism,” to theorize a liberal American society. He offers a fascinating psychoanalytic reading of the threat that tribal communalism posed to “American” society that also considers the simultaneous threat and attraction emblazoned by the “Indian savagery” onto which white aggression projected itself.

See also Eric Cheyfitz, *The Poetics of Imperialism: Translation and Colonization from The Tempest to Tarzan* (Oxford: Oxford University Press, 1991). Cheyfitz discusses the translation of “Native American land... into the European identity of property” (43). Whereas Cheyfitz demonstrates the translation of the other into alienating terms, I am more concerned with how that translation destabilizes the subjectivity of the dominant group as it exposes the already alienating terms on which that subjectivity is predicated.


11 The Dawes Act allotted land and awarded citizenship to members of tribal

12 According to Macpherson, the individual is (naturally) free to enter voluntarily into relations with other individuals and with society at large. In thus conceptualizing the person, legislators in the early nation excluded those from cultures with different conceptions of property from personhood. It is, moreover, the inalienability of the person that these cases conceptually problematize. In Johnson v. McIntosh, property cannot be alienated because it is not really owned, which deconstructs a self-possession rooted in the inalienability of the person. (See Macpherson, pp. 23–26.)

G. Edward White similarly makes a distinction between African Americans and indigenes that turns on their different relations to property. He traces an evolving policy to expropriate tribal property that is similar to mine and notes that the justices' conflicting positions "functioned to exclude from discourse a third ideological point of view, that of cultural relativism"; however, he does not sufficiently consider the representational threat that obscures the possibility of attending to cultural relativism (The Marshall Court and Cultural Change. 1815–35: The History of the Supreme Court of the United States, p. 706).


15 Letters from Thomas L. McKenney to James Barbour on, respectively, Nov. 29, 1827, and Feb. 20, 1827. Cited in McLoughlin, Cherokees and Missionaries.

16 "Of Mimicry and Men: The Ambivalence of Colonial Discourse," October 28 (Spring 1984): 125–33, 127. Future references in text are cited as MM. The Cherokee function as the colonized in Bhabha's formulation, returning "the look of surveillance as the displacing gaze of the disciplined, where the observer becomes the observed and 'partial' representation rearticulates the whole notion of identity and alienates it from essence" (129). Needless to say, the structural contingency of an act of mimicry at least complicates the possibility for critique. In the case of the Cherokee, the mimicry helped to promote dissent in the Cherokee nation and expedited removal. Nevertheless, the response of the United States government attests to the threat of mimicry.


21 It is interesting to note, in this context, that the Cherokee Constitution excludes descendants of Africans, including offspring of miscegenation, from "the rights and privileges of [the] nation."

22 I have taken the phrase "categorical authority" used in this context from Jacques Derrida, who argues that the obscured origins of the law obfuscate the positivist sources of its categorical authority. "Devant la loi," trans. Avital Ronell, Kafka and the Contemporary Critical Performance: Centenary Readings, ed. Alan Dundes (Bloomington: Indiana University Press), pp. 128–49.

23 Richard Ellis's The Union at Risk (New York: Oxford University Press, 1987) offers insight into how the Nullification Crisis influenced the resolution of Worcester. Jackson, already no friend to the Cherokee, was ironically supported in his position by Calhoun's skillful maneuvering to identify South Carolina's position with Georgia's. The fate of the Union prompted all parties except the Cherokee (that is, the government, the Georgia legislature, the Marshall Court, and even Worcester himself) to modify their stances. This outcome ensured the Cherokee's subsequent removal from Georgia.

24 Don E. Fehrenbacher explains the context of this "official" opinion in Slavery, Law and Politics (New York: Oxford University Press, 1981). Taney offers a long, partisan, and sometimes inaccurate opinion on contradictory aspects of the case (for example, his jurisdictional and territorial rulings may be in conflict). As a result, several of the concurring opinions do not seem fully to concur; nevertheless, the court's majority concurrence designates Taney's opinion as the "official" opinion of the Court. Fehrenbacher presents convincing evidence that Taney re-wrote (and significantly augmented) his opinion in response to Curtis's lengthy and impressive dissenting opinion; the Court records are, therefore, not what was actually heard at the trial (and consented to by the concurring justices).

25 Walter Benn Michaels, in "The Vanishing American," American Literary History 2, no. 2 (Summer 1990): 220–41, traces the logical culmination of this process in the official policies through which, by the twentieth century, Indians were viewed as potential citizens and, with the Citizenship Act of 1924, declared citizens. He explains the symbolic process by which "Indians" were appropriated as "American" ancestors and had their identity reconceived as a cultural inheritance. I read Taney's contrast between tribal nations and descendants of Africans as an indication of the direction of this process.

26 Taney goes on to cite directly the first two paragraphs of the Declaration of Independence both to contrast policy toward indigenes and African Americans and to preempt the abolitionist appeal to the language of the Declaration.

27 Downes v. Bidwell, United States Lawyer's Edition 179–82, 1089–1146, pp. 1116 and 1139. Even the October 17, 1899, platform of the American Anti–Imperialist League, while "regretting that the blood of the Filipinos is on American
Priscilla Wald


In a discussion of the relationship between popular historical romances and United States imperialism, Amy Kaplan shows how disembodied national power allows for an economic expansion that is not based on territorial expansion. "Romancing the Empire: The Embodiment of American Masculinity in the Popular Historical Novel of the 1890s," *American Literary History* 2, no. 4 (Winter 1990): 659–90. The "disembodied shade" of a territory thus (un)incorporated threatens to bring such strategies to consciousness.

The quoted phrase is from W. E. B. Du Bois's *Souls of Black Folk*. He refers to cultural observations so (ominously) obvious that they must be repressed.

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Gauri Viswanathan

The Naming of Yale College

British Imperialism and American Higher Education

If the involvement of British imperialism in American higher education has remained one of the lesser known stories of American cultural history, the neglect certainly cannot be attributed to a colorless narrative. Replete with capital intrigue, astute maneuvering, and an unending series of tactical compromises, the founding history of at least one major university in the United States—Yale University—has deep, abiding roots in the mercantile activities and imper politics of England’s East India Company. Yale’s very establishment, being a direct outgrowth of the capitalist venture that England’s colonial excursions represented. Though Elihu Yale is not technically the founder of Yale University, his association with the University extended from an initial donation of money and books to the use of his name, transforming his erstwhile political authority in the context of one British colony—India—to a new form of cultural authority in another, the Americas. Yale College, as surrogate heir to the childless but wealthy English merchant, inherited a patrimony that united the destinies of American higher education with the fruits of England’s empire-building.

This essay seeks to elucidate that connection and flesh out details of Yale’s years in India; simultaneously, in tracing the founding of American institutions of higher learning to British imperial wealth, it also seeks to illuminate the conditions enabling the transition from British mercantilism, in its precentralized administrative phase, to full-blown imperialism and the circulation of colon