Squaw Drudges, Farm Wives, and the Dann Sisters' Last Stand: American Indian Women's Resistance to Domestication and the Denial of Their Property Rights

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This article discusses the Dann sisters' struggle against the federal government for legal recognition of their right to graze livestock on Western Shoshone ancestral land. It places this struggle within the context of U.S. policy towards the Indians, policy which historically has denied the property rights of Indian women and attempted to transform Indian women's social roles so that they mirror those of white American women. Viewed in this context, the Dann sisters' battle is symbolic of Indian women's continuing resistance towards the U.S. government's attempts to impose upon them a Euro-American vision of property rights, proper land use, and correct gender roles for women.
It is very clear to those most closely studying the 'Indian problem' that the elevation of the women is ... the key to the situation. ... [T]he children start from the plane of the mother rather than from that of the father. Therefore the great work of the present is to reach and lift the women and the home.¹

[The women] ... are now relieved of much drudgery and toil once imposed upon them by the male members of the tribe, the burden of the heaviest work being borne, as it should be, by the stronger sex.²

"[T]he earth is our mother.... Only a woman can give birth, nourish life. We can’t own the earth because we are from the earth. Can you own your mother when she brought life to you?"³

I. INTRODUCTION

Since the early 1970s, two Western Shoshone sisters named Carrie and Mary Dann have fought for legal recognition of their right to graze livestock on Western Shoshone ancestral land in Nevada

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¹ Merial A. Dorchester, Suggestions from the Field, in 1891 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H. R. EXEC. DOC. No. 1, pt. 5, 52d Cong., 1st Sess. 552, 552. Dorchester was a special agent for the Indian School Service in 1891. See id.
² 1897 BOARD OF INDIAN COMMISSIONERS ANN. REP. 18.
that is claimed by the federal government as public domain land.\textsuperscript{4} When the United States brought trespass actions against the Dann sisters for failing to obtain a grazing permit, the Danns claimed that the government could not require them to obtain a permit because the Western Shoshones held aboriginal title to the land.\textsuperscript{5} In 1985, the U.S. Supreme Court held that the United States had already made "payment" to the Western Shoshone Tribe for extinguishment of the tribe's aboriginal title to the land by placing funds in a U.S. Treasury trust account for the tribe,\textsuperscript{6} even though the tribe had not yet received any of the money.\textsuperscript{7} This holding precluded the Danns from raising Western Shoshone aboriginal title as a defense to the trespass action.\textsuperscript{8} In 1989, the Ninth Circuit held that the Danns might have limited individual aboriginal title and aboriginal grazing rights, but any such grazing rights would be subject to federal regulation.\textsuperscript{9} The Danns have continued to resist government efforts to restrict grazing of their livestock on land they consider their tribe's\textsuperscript{10} and have also opposed government-approved mining activities and the testing of nuclear weapons near their ranch.\textsuperscript{11}

\textsuperscript{5} See id.
\textsuperscript{6} See id. at 44.
\textsuperscript{7} See id. ("Congress had not yet approved a plan for the distribution of the money to the tribe.").
\textsuperscript{8} The Court's denial of aboriginal title as a defense to the trespass action ultimately led to the seizure of some of the Danns' livestock. See infra note 497 and accompanying text.
\textsuperscript{9} See United States v. Dann, 873 F.2d 1189, 1200 (9th Cir. 1989).
\textsuperscript{10} See, e.g., The Invisible People—Fighting for Land in Nevada (CNN television broadcast, Nov. 15, 1994), available in LEXIS, News Library, CNN File [hereinafter The Invisible People] (reporting that the Danns "continue to defy the federal government, grazing their livestock on land they insist belongs to Western Shoshone"); see also Western Shoshone, BLM at Odds, INDIAN COUNTRY TODAY, Mar. 9-16, 1998, at B8 (noting that the Danns had been served notice from the Bureau of Land Management for unauthorized grazing on public lands and trespass). In August 1998, the Interior Board of Land Appeals stayed action on the trespass order against the Danns. See Sisters Win Round in BLM Fight, LAS VEGAS REV.-J., Aug. 26, 1998, at B6, available in 1998 WL 7223531.
\textsuperscript{11} See Scott Robert Ladd, Oro Nevada Mining Company Begins Drilling for Gold Near Dann Family Home, (Dec. 10, 1996) <http://www.alphadc.com/wsdp/oro-dann.html>; Scott Robert Ladd, NATIVE-L mailing list: Western Shoshone Alert: Oro Nevada Begins Drilling near Dann Ranch, (Nov. 21, 1996) <http://bioc02.uthscsa.edu/natnet/archive/nl/9611/0101.html>; Human Rights: Native American Campaigner Honored, INTER PRESS SERVICE, Dec. 8, 1993, available in 1993 WL 2531988 (noting that more than 1000 atomic tests had been carried out on Western Shoshone land since 1951) [hereinafter Human Rights]. More than 60% of the gold produced in the United States comes from Nevada, and 25% of that total comes from the area referred to by the Bureau of Land Management as the Elko district, which
Viewed against the backdrop of the history of U.S. government policy toward American Indian tribes and their land, the Dann sisters' defiance appears as more than simply the struggle of two individuals to defend what they believe to be theirs; rather, the Danns' struggle can be understood as a striking example of continuing resistance by Indians, and by Indian women in particular, to the federal government's efforts to impose, both explicitly and implicitly, a Euro-American vision of the nature of land, property rights, proper land use, and acceptable gender roles in the family, in society, and in the economy. Placed in an even broader context, the Danns' struggle can be viewed as an example of the resistance of indigenous peoples around the world to the continuing effects of colonization.

The legal principles underlying the federal courts' approach to the Dann sisters' claimed defense were established by the Supreme Court in the 1823 case Johnson v. McIntosh.\textsuperscript{12} Chief Justice John Marshall's opinion for the Court laid the foundation of U.S. law regarding Indian property rights by denying Indian tribes full legal title to their land.\textsuperscript{13} The Johnson opinion was predicated on a particular conception of Indian land-use patterns and property rights. Chief Justice Marshall depicted Indians as savages who lived an unsettled life of hunting and fighting, who recognized only communal rights with respect to land, and who could not survive in the vicinity of farmers.\textsuperscript{14} Indian women and their relationship with the land were wholly absent from this picture. Chief Justice Marshall ignored the fact that for centuries, many tribes had indeed engaged in settled agriculture, and that in many of these tribes, women were largely responsible for farming and were the holders of important property rights in the land.\textsuperscript{15}

encompasses the Danns' lands. \textit{See} REBECCA SOLNIT, SAVAGE DREAMS: A JOURNEY INTO THE HIDDEN WARS OF THE AMERICAN WEST 169 (1994). Carrie Dann has described the gold mining on Shoshone aboriginal lands as follows:

"To dig under the earth to get to that gold, to pump out that water to get to that gold, is a crime. It's a crime against humanity, a crime against life... we have other things out there—the deer, the eagle, the rabbits. The gold mining today is going to destroy the life for the future generations."


\textsuperscript{12} 21 U.S. (8 Wheat.) 543 (1823).

\textsuperscript{13} \textit{See id.} at 574; \textit{infra} Part II.A (discussing Johnson).

\textsuperscript{14} \textit{See Johnson}, 21 U.S. (8 Wheat.) at 549-50, 590-91; \textit{infra} notes 45-52 and accompanying text (discussing Chief Justice Marshall's characterization of Indians and their way of life).

\textsuperscript{15} \textit{See infra} Part II.B (discussing the history of Indian agriculture and women's role
Later in the nineteenth century, federal government officials acknowledged Indian women's traditional role in tribal agriculture, but viewed this role as evidence of Indians' "uncivilized" way of life, in which, the officials imagined, men were idle and women were downtrodden and overburdened "sawd drudges." Officials sought to transform this imagined way of life through assimilation into the Euro-American way of life, in which men were farmers and women were dependent and submissive farm wives. Tribal land was allotted to individual Indians, with a preference for Indian men, to foster Indian farming. Indian women were to be, in effect, domesticated—rescued from a wild and savage life in order to take their proper place in the domestic sphere. In the twentieth century, in *United States v. Dann*, the Supreme Court, and lower federal courts, dealt directly with the often ignored property rights of Indian women but did not elaborate on the nature of these rights, either currently or historically, or discuss the impact of federal government policy, both past or present, on the property rights and way of life of Indian women.

This Article explores how federal law and government policy have denied the property rights of Indian women and have been aimed, both implicitly and explicitly, at transforming Indian women, their relationship with the land, and their role within the family, in society, and in the economy, by changing them into model American farm wives, who left farming and other labor outside the home, the responsibilities of land ownership, and involvement in the economy to their husbands. The Article also analyzes how the Dann sisters' struggle reflects continuing resistance to this denial of property rights and transformation by Indian women, who have emerged as important contemporary tribal leaders.

16. *See infra* notes 272-74 and accompanying text (discussing government officials' attitudes toward Indian women's role in tribal agriculture).

17. 470 U.S. 39 (1985). Indian women's property rights were also implicated in another important twentieth-century Supreme Court case, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). In *Martinez*, tribal member Julia Martinez argued that a tribal ordinance denying tribal membership to the children of female members, but not of male members, who married outside the tribe, violated the equal protection provision of the Indian Civil Rights Act. *See id.* at 51-52. Without tribal membership, the plaintiff's children would have no right to inherit their mother's home or her possessory rights in tribal communal lands. *See id.* at 52-53. The Court reversed the Ninth Circuit's decision in favor of the plaintiff, holding that the Indian Civil Rights Act did not authorize actions against the tribe or its leaders in federal court. *See id.* at 72.

18. For example, Wilma Mankiller served as Principal Chief of the Cherokee Nation from 1985 to 1995. *See Marcia Froelke Coburn, Cherokee Chieftain: Wilma Mankiller*
Part II analyzes Johnson v. McIntosh and the distorted view of the Indian way of life on which the Supreme Court based its decision and compares this view to the historical reality of the agricultural practices of the tribes east of the Mississippi River. In the Six Nations of the Iroquois Confederacy of New York State, the Algonquian tribes of the Virginia tidewater, and the tribes of what is today the State of Illinois, for example, women were traditionally given primary responsibility for agriculture and were recognized as having strong ties to, and property rights in, the land they farmed. The Johnson Court ignored Indian women's role in tribal agriculture and imposed limitations on Indian tribes' property rights that were similar to those imposed on the property rights of nineteenth-century American women. Because in many tribes, Indian women held the most important individual property rights associated with land, the Johnson Court's restrictions on Indian property rights can be understood as having the most profound impact on Indian women.

Part III discusses government policy toward Indians and their property rights later in the nineteenth century, when the General Allotment Act (or "Dawes Act") and related government programs sought to impose the U.S. legal system's conception of land ownership and use on Indians and to transform Indian women into farm wives, in keeping with Euro-American society's understanding of proper gender roles. Together with the Christianization of the Indians, the imposition of the U.S. legal system's real property


20. See generally Allison M. Dussias, Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free
concepts and the transformation of Indian gender roles were integral components of the government's policy to assimilate the Indians.\textsuperscript{21} Part III pays particular attention to the "field matron" program, under which white women were appointed to provide training in cooking, cleaning, sewing, home decorating, and other homemaking skills to Indian women, while other government employees focused on teaching Indian men to be farmers. The decision to teach men what many tribes considered "women's work," rather than teaching Euro-American farming techniques to Indian women who were the traditional tribal agriculturalists, may well have contributed to the allotment program's failure to transform Indians into successful farmers.

Part IV examines the Dann sisters' struggle and their dealings with the federal government in light of the analysis in Parts II and III. This Part also discusses how the Dann sisters' way of life and legal claims reflect continuing resistance to the gender roles, the attenuated relationship with the land, and the restricted property rights that the federal government has long sought to impose on Indians in general, and on Indian women in particular. The Article concludes with some final thoughts on the historical and continuing effects of the government's efforts to transform and assimilate Indians and to destroy their traditional relationship with the land.

II. INDIAN FARMING AND PROPERTY RIGHTS: MARSHALL'S STORY VS. "THE ACTUAL STATE OF THINGS"

However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; 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.\textsuperscript{22}


\textsuperscript{21} For a general analysis of the assimilation policy, see John W. Ragsdale, Jr., \textit{The Movement to Assimilate the American Indians: A Jurisprudential Study}, 57 UMKC L. REV. 399 (1989). \textit{See also} CHRISTINE BOLT, \textit{AMERICAN INDIAN POLICY AND AMERICAN REFORM} 71-102 (1987) (discussing assimilationist pressures and government responses to them from the 1860s to 1920).

\textsuperscript{22} Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 591 (1823). In \textit{Johnson}, Chief Justice Marshall used the phrase "the actual state of things," referred to in the heading in a discussion of the proper rule to be applied to the relations between Indians and whites with respect to land. \textit{Id.}
In *Johnson v. McIntosh*, the Supreme Court denied Indian tribes full title to their land. In his opinion for the Court, Chief Justice Marshall presented a particular view of Indian land-use patterns as an excuse for the limitations that the Court was imposing on Indian property rights. Chief Justice Marshall's depiction of the Indian way of life bore little resemblance, however, to the reality of Indian agriculture east of the Mississippi River. Despite its inaccuracy, Chief Justice Marshall's view of Indian agriculture played an important role in the Court's evisceration of tribal property rights.

Part II.A analyzes Chief Justice Marshall's opinion in *Johnson*, the inaccurate view of Indian society that it presented, and the effect of denying the existence of Indian agriculture on tribal property rights. Focusing on three groups with ties to the *Johnson* case—the Six Nations of the Iroquois Confederacy of New York State, the Algonquian tribes of the Virginia tidewater, and the tribes of what is today Illinois—Part II.B examines the historical reality of Indian agriculture and Indian women's involvement in it in the eastern half of the United States, and the property rights recognized in Indian women because of their relationship with the land. This analysis demonstrates that women's agricultural production was very important to these tribes and, in some tribes, served as the basis for individual property rights for Indian women. Moreover, this analysis also shows that even if the Justices of the Supreme Court were unaware of, or unwilling to admit the existence of, Indian agriculture, Indian agriculture and women's role in it had been reported by white observers for over two hundred years prior to the *Johnson* decision.

A. Johnson v. McIntosh: Ignoring Indian Women

[T]he tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest.

1. The *Johnson* Decision: The Effects of "Discovery"

In *Johnson*, the Supreme Court addressed a dispute between white litigants over the ownership of land in Illinois. The plaintiffs'
claim to the land was based on grants made in 1773 and 1775 by the Illinois and Piankeshaw Nations, who were acknowledged by all parties in the case to have been in rightful possession of the land in question at the time of the grants and to have inhabited it "from time immemorial." The defendants' claim was based on a later conveyance in 1818 by the United States, which had extracted land cessions from the tribes in the 1795 Treaty of Greenville. Thus, there were no Indian litigants in the case, and the Court did not consider the relevant tribes' understanding of the grants at issue. As a result, no Indian voices were heard in a case which had, and continues to have, profound effects on Indian property rights.

In his opinion for the Court, Chief Justice Marshall relied on a principle adopted by European nations to avoid conflicting claims when lands became known to Europeans for the first time. This principle held that "discovery [of land unknown to Christian European peoples] gave title to the government by whose subjects it was made, against all other European governments" and gave the


26. See Johnson, 21 U.S. (8 Wheat.) at 571-72; see also id. at 550-58 (describing in detail the conveyances to the plaintiffs' predecessors-in-interest). The Illinois Nation consisted of three united tribes: the Kaskaskias, the Pewarias, and the Cahokia. See id. at 548; see also infra Part II.B.3 (discussing the Illinois Indians). The demand for and speculation in western lands that led to disputed land claims like the one in Johnson is discussed in WILLIAMS, supra note 23, at 233-307.

27. See Johnson, 21 U.S. (8 Wheat.) at 572.

28. Id. at 554 (Illinois Indians); id. at 558 (Piankeshaw Indians). The argument of the plaintiffs, who were represented by Daniel Webster, is summarized in WILLIAMS, supra note 23, at 309-10. See also Johnson, 21 U.S. (8 Wheat.) at 562-67 (describing the plaintiffs' arguments).

29. See Johnson, 21 U.S. (8 Wheat.) at 560. The defendants' argument is summarized in WILLIAMS, supra note 23, at 310-11; see also Johnson, 21 U.S. (8 Wheat.) at 567-71 (describing the argument of the defendants).


31. Johnson, 21 U.S. (8 Wheat.) at 573. Chief Justice Marshall argued that "the character and religion" of the Indians "afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy," thus using the Indians' status as heathens to explain the imposition of the Discovery Doctrine on them and their lands. Id. He also noted that commissions given by the English government authorized the taking possession of and settlement of lands unknown to and not possessed by Christian people. See id. at 576-77. See generally Newcomb, supra note
discovering nation "an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest." Under this "Discovery Doctrine," Indians "were admitted to be the rightful occupants of the soil . . . but . . . their power to dispose of the soil at their own will, to whomever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." Because the discovering nation had title to the land, it had the power to grant land still occupied by Indians. The United States, which had succeeded to the rights of Great Britain at the end of the Revolutionary War, had, Chief Justice Marshall explained, accepted this principle. On the basis of the Discovery Doctrine, the Court declined to recognize the validity of the plaintiffs' earlier grants from the tribes.

Chief Justice Marshall's application of the Discovery Doctrine to Indian tribes denied the tribes full legal title to their lands. The application of the Doctrine, however, affected more than just tribal property rights; it also eviscerated the tribes' ability to enter into foreign relations with other nations. Under the Discovery Doctrine, in addition to gaining exclusive title to land discovered by its citizens, the discovering nation also gained the exclusive right to deal with the natives: "Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them." Thus, the Discovery Doctrine adversely

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24 (examining the role that the distinction between Christian and heathen peoples played in the Discovery Doctrine and in Johnson).
32. Johnson, 21 U.S. (8 Wheat.) at 587; see also id. at 585 ("[T]he exclusive right to purchase from the Indians resided in the government.").
33. Id. at 574.
34. See id. at 579-80.
35. See id. at 584, 588; see also id. at 587 (discussing the United States's land purchases from France and Spain).
36. See id. at 587.
37. See id. at 604-05.
38. See id. at 573.
39. Id. Chief Justice Marshall reiterated this point in two important later cases, Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831), and Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). In Cherokee Nation, he explained: [The Indians] and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility. Cherokee Nation, 30 U.S. (5 Pet.) at 17-18. In Worcester, he commented that the Indian nations were excluded "from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed and this was a restriction which
affected both tribal property rights and, by imposing limitations on the ability of tribes to enter into relations with foreign nations, tribal sovereignty.\textsuperscript{40}

Chief Justice Marshall declined to discuss the justice of the Discovery Doctrine and its application to Indian tribes, noting that "[c]onquest gives a title which the Courts of the conqueror cannot deny."\textsuperscript{41} Moreover, he explained that treating the tribes as unable to transfer legal title was indispensable to the system under which the country had been settled, and thus could not be rejected by the courts\textsuperscript{42} no matter how much "this restriction may be opposed to natural right, and to the usages of civilized nations."\textsuperscript{43} In addition to acknowledging the pragmatic nature of the Court's decision, however, Chief Justice Marshall also maintained that the principles the Court was applying "may... find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them."\textsuperscript{44} Chief Justice Marshall described the Indians encountered by European settlers as hunters and contrasted them with the "agriculturists, merchants, and manufacturers" who sought to expel the Indians from the territory they possessed.\textsuperscript{45} The Indians were "fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest."\textsuperscript{46} Leaving them in possession of their land "was to leave the country a wilderness,"\textsuperscript{47} a proposition that Chief Justice Marshall apparently deemed unacceptable. As a result, the "general rule" that the rights of "the conquered shall not be wantonly oppressed" and thus "the rights of the conquered to property should remain unimpaired" was not

\textsuperscript{40} Later Supreme Court cases have used tribes' reduced property rights as the basis for decreasing their governmental authority over their reservations. \textit{See, e.g.}, Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408, 422-25 (1989) (holding that the Yakima Tribe did not have authority to zone fee lands owned by nonmembers of the tribe in an area of the reservation that contained almost 50% fee land); Montana v. United States, 450 U.S. 544, 564-65 (1981) (holding that the Crow Tribe did not have authority to regulate hunting and fishing by non-Indians on land that had been transferred to non-Indians under allotment acts). The relationship between property rights and sovereignty in Indian law is explored in Joseph William Singer, \textit{Sovereignty and Property}, 86 NW. U. L. REV. 1 (1991).

\textsuperscript{41} \textit{Johnson}, 21 U.S. (8 Wheat.) at 588.

\textsuperscript{42} \textit{See id.} at 591-92.

\textsuperscript{43} \textit{Id.} at 591.

\textsuperscript{44} \textit{Id.} at 589.

\textsuperscript{45} \textit{Id.} at 588.

\textsuperscript{46} \textit{Id.} at 590.

\textsuperscript{47} \textit{Id.}
applicable to the Indians. According to Chief Justice Marshall’s rendition of Indian-white encounters, the Indians obligingly “receded” as the white population advanced because “the country in the immediate neighborhood of agriculturists became unfit for them.” The “ancient inhabitants of the soil” followed the fleeing game “into thicker and more unbroken forests,” leaving the soil vacant, and thus conveniently available, for the Europeans who coveted it.

Chief Justice Marshall seemed to accept without reservation the defendants’ characterization of Indian land use and corresponding property rights: “[T]he North American Indians could have acquired no proprietary interest in the vast tracts of territory which they wandered over; and their right to the land on which they hunted, could not be considered as superior to that which is acquired to the sea by fishing in it.” Thus, Chief Justice Marshall used the Indians’ alleged divergence from European norms as a basis for denying their property rights and sanctioning the United States’s assertion of power over them.

2. The Court’s Ignorance (or Ignoring) of Indian Agriculture

Chief Justice Marshall maintained that the principle adopted by the Court in Johnson was adapted to “the actual state of things,” yet

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48. Id. at 589-90.
49. Id. at 590. In some areas, the “receding” of the Indians may be explainable by the fact that whites were burning their crops. See, e.g., Thomas R. Wessel, Agriculture, Indians, and American History, 50 Agric. Hist. 14 (1976) (describing the destruction of Iroquois crops).
51. Id. at 569-70; see also id. at 570 (“[T]he lands occupied by each tribe were not used by them in such a manner as to prevent their being appropriated by a people of cultivators.”).

The message of Johnson v. McIntosh ... was that the natural rights of human beings to dispose of property that they held by virtue of possession did not apply to Indians in America. ... The special principles of Indian-white property rights were a function of the “character and habits” of the Indians.

WHITE, supra, at 710. As Professor Williams has explained, “[t]he Doctrine of Discovery’s underlying medievally derived ideology—that normatively divergent ‘savage’ peoples could be denied rights and status equal to those accorded to the civilized nations of Europe—had become an integral part of the fabric of United States federal Indian law.” WILLIAMS, supra note 25, at 317. In his work, Professor Williams discusses the medieval origins of the Discovery Doctrine, which originated during the period of the Crusades. See id. at 13-58.
his characterization of the Indian way of life in fact misrepresented the actual state of Indian agriculture. As depicted by Chief Justice Marshall, the Indians were warlike hunters who relied on the forest for their subsistence. By deeming their way of life incompatible with the activities of agriculturists, Chief Justice Marshall implied that the Indians themselves did not farm, an implication that he strengthened by contrasting the Indians with agriculturists, merchants, and manufacturers.

In actuality, agriculture—in simple terms, “raising things on purpose”—has an extensive history in the Americas, where women may well have been the first agriculturalists. At least seven thousand years before English colonists founded Jamestown in Virginia, Indians in Central America and Mexico tilled the soil and planted and harvested crops. Although it is not certain when agriculture began in what is today the United States, Indians in the Midwest and Northeast engaged in agriculture at least five thousand years before the birth of Christ. Moreover, by 5000 B.C., Indians in present day Illinois were cultivating squash, which was later combined with corn and beans to form the basis of a complex system

54. See id. at 590.
55. See id.
56. See id. at 588. This statement also ignored Indians' economic activity as traders and makers of goods, that is, as merchants and manufacturers. See, e.g., MATTHEW DENNIS, CULTIVATING A LANDSCAPE OF PEACE: IROQUOIS-EUROPEAN ENCOUNTERS IN SEVENTEENTH-CENTURY AMERICA 154-79 (1993) (discussing the extensive trade between the Iroquois and the Dutch); DANIEL K. RICHTER, THE ORDEAL OF THE LONGHOUSE: THE PEOPLES OF THE IROQUOIS LEAGUE IN THE ERA OF EUROPEAN COLONIZATION 75-104 (1992) (same).
58. See id. at 11. Hurt surmised that if women were the food gatherers in tribes of the prehistoric period, as ethnological studies have indicated was the case in the historic period, then because “women . . . had a better understanding of and more interest in the plant world than did men” and “their domestic duties kept them closer to home on a daily basis, women had a better opportunity to learn to raise and cultivate certain plants.” Id. For a comprehensive history of Indian agriculture from prehistoric times to the present see generally id. See also Wessel, supra note 49, at 9 (discussing Indian agriculture in the United States from the first contact between Indians and Europeans until the early twentieth century and how the historical significance of Indian agriculture has been downplayed).
60. See HURT, supra note 57, at 1.
61. See id. at 11.
of agriculture. Apparently, no representatives of the Illinois Indians, or of any other tribe, were present when Johnson was decided to enlighten the Court on the reality of Indian agriculture.

Moreover, by emphasizing hunting and ignoring agriculture, Chief Justice Marshall focused on work that, in many tribes, was traditionally done by men and ignored Indian women and their work. As one scholar has noted, "At the time the Europeans first arrived in North America, and for centuries after, Native American women dominated agricultural production in the tribes of the eastern half of the United States." For example, in the Six Nations of the Iroquois Confederacy, the Algonquians of the Virginia tidewater, and the tribes of Illinois, women were primarily responsible for tribal farming, and their use of the land led to their holding important property rights in the land. Although Indian men provided some

62. See id.; see also infra note 197 (describing the benefits derived from growing corn, beans, and squash together).
64. See infra Part II.B.1.
65. See infra Part II.B.2.
66. See infra Part II.B.3.
67. These tribes are fitting subjects for discussion because of their ties to the Johnson case. The land at issue in Johnson was conveyed to the plaintiffs by Illinois Indian tribes.
assistance to women in farming, their principal contribution to many tribal economies resulted from hunting. By emphasizing Indian men's work and ignoring Indian women's work, Chief Justice Marshall depicted Indians as people whose property rights could be restricted justifiably by the Europeans and their American successors on the grounds that the Indians did not establish title to the land through settled agriculture but instead left it a "wilderness." 

Chief Justice Marshall's inaccurate description of the "actual state of things" with respect to Indian agriculture raises the question of how much Chief Justice Marshall and his fellow Justices really knew about Indian agriculture and Indian women's agricultural activities at the time of the Europeans' arrival in the New World. Chief Justice Marshall himself was raised in Virginia, whose aboriginal inhabitants had farmed extensively. Early English observers, such as Captain John Smith, commented on the agricultural practices of Virginia's native people in published works. In fact, not long before Chief Justice Marshall was born, books that accurately depicted at least some aspects of the Indians' way of life had already been published in the United States. For example, by the time of Chief Justice Marshall's birth in 1755, Cadwallader Colden had published The History of the Five Indian Nations, which

and lay within the original chartered territory of Virginia, the aboriginal home of a number of Algonquian tribes that were first encountered by English settlers in the sixteenth century. The Six Nations of the Iroquois Confederacy are also considered because they had a long tradition of agricultural activity, primarily carried on by women, and because they were the subject of Cadwallader Colden's book, The History of the Five Indian Nations, which was cited in the facts in Johnson. See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 567 n.a (1823).

68. See, e.g., infra notes 111, 113, 199 and accompanying text.
69. Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 590 (1823); see also Smits, supra note 63, at 287 (noting how Euro-Americans defended their dispossession of Indians by disregarding Indian agriculture).
70. See infra Part II.B.2 (discussing farming by the Virginia Algonquians). By Chief Justice Marshall's time, the Virginia Indians no longer existed as a separate people. See LEONARD BAKER, JOHN MARSHALL: A LIFE IN LAW 27 (1974). Chief Justice Marshall grew up in western Virginia, which was considered the frontier in comparison to the plantations of eastern Virginia. See id. at 11. In eastern Virginia, the remnants of the area's original inhabitants were concentrated on small reservations, and the landscape had been altered by the activities of white settlers by the early eighteenth century. See STEPHEN R. POTTER, COMMONERS, TRIBUTE, AND CHIEFS: THE DEVELOPMENT OF ALGONQUIAN CULTURE IN THE POTOMAC VALLEY 221, 223 (1993).
72. See BAKER, supra note 70, at 7.
described the growing of corn by the tribes of the Iroquois Confederacy in New York. Colden’s book was even cited in the facts set out in Johnson; rather than serving as evidence of Indian agriculture, Colden’s book was cited by the defendants in support of the proposition that the Indians remained in a state of nature and lacked permanent property rights. Chief Justice Marshall, who had little formal education, may not have been familiar with these sources. As a young man, however, Chief Justice Marshall must have been familiar with the continued existence of the Indians and with their conflicts with white men, both from hearing about his father’s experiences as a surveyor and tax collector in the territory of Kentucky, whose settlers planned nearly annual raids to destroy Shawnee cornfields along the Wabash River, and from his own experiences as a Virginia state legislator. As a delegate to the Virginia General Assembly, Chief Justice Marshall joined Patrick Henry in support of an unsuccessful bill to encourage marriages between Virginians and Indians as a means of resolving racial difficulties between them. Prominent acquaintances of Chief Justice Marshall, including George Washington, under whose command Chief Justice Marshall served during the Revolutionary War, certainly knew of the continuing existence of Indian agriculture.

Even if Chief Justice Marshall and his fellow Justices had been aware, at the time Johnson was decided, that Indian women in many eastern tribes had engaged in extensive agriculture for generations, this information might not have altered their conclusion that the Indians’ character and lifestyle excused the application of the Discovery Doctrine and its restrictions on property rights. The fact that farming was women’s work might simply have been regarded as evidence that farming did not make a significant contribution to the

book was published in 1727 and was enlarged in later editions. See 4 DICTIONARY OF AMERICAN BIOGRAPHY 286 (Allen Johnson & Dumas Malone eds., 1930).

74. See Colden, supra note 73, at xxii, 2. Colden noted that the Indians even distinguished the seasons of the year in terms of such events as the planting and ripening of corn. See id. at 132, note.

75. See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 567 n.a (1823).

76. See Baker, supra note 70, at 13.

77. See id. at 83-86.

78. See Wessel, supra note 49, at 14.

79. See Baker, supra note 70, at 94.

80. See id. at 51-55.

81. See Wessel, supra note 49, at 14 (discussing Washington’s destruction of Iroquois crops); cf. infra note 273 (noting that Thomas Jefferson wrote about the labor performed by Indian women).
Indians' livelihood. In other words, the Court might have concluded that if such work were important to the tribes, they would not have entrusted it primarily to women.\textsuperscript{82} Thus, even tribes that farmed extensively could have been described as hunters "whose subsistence was drawn chiefly from the forest,"\textsuperscript{83} as long as the farming was chiefly women's work. Regardless of whether Chief Justice Marshall and his colleagues failed to mention Indian farming because they were ignorant of its existence, or discounted it because it was considered largely women's work by many tribes and therefore had to be unimportant, the characterization of the Indian way of life that Chief Justice Marshall used to excuse the Court's newly created restrictions on Indian property rights was inaccurate with respect to most eastern tribes.\textsuperscript{84}

3. The Emasculation of Indian Property Rights

Although the Johnson Court ignored Indian women and the property rights they derived from agricultural activity, the principles that the Court applied to restrict Indian property rights echoed the U.S. legal system's treatment of married women and their property rights generally at the time. The common law marital property system in force in most of the United States at the time\textsuperscript{85} provided that married women had very limited rights with respect to the control and alienation of property. Under the doctrine of coverture, adopted from English common law, a married woman was (in the

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\textsuperscript{82} David Smits has described this attitude on the part of Captain John Smith and other Englishmen with respect to the agricultural activities of the Virginia Algonquians: These observers "simply would not classify a society as agricultural if its men, who ought to be the main providers as husbandmen, were not the farmers." Smits, supra note 63, at 285-86. Theda Perdue has described the same phenomenon with respect to white attitudes toward Cherokee farming, which was carried on by women: "Virtually all observers discounted cultivation by women: if only women farmed, then agriculture could not be very important in the Cherokee economy." Perdue, The Cherokee Response, supra note 63, at 92.

\textsuperscript{83} Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 590 (1823).

\textsuperscript{84} See supra note 58 and accompanying text (noting the importance of farming to the Indian way of life).

\textsuperscript{85} Louisiana, and later states such as Arizona, California, Idaho, Nevada, New Mexico, Texas, and Washington, which were influenced by French and Spanish law, adopted the continental system of community property rather than the common law system. See ROGER A. CUNNINGHAM ET AL., THE LAW OF PROPERTY 232 (2d ed. 1993). The community property concept relies on the notion that the husband and wife are equals and form a marital partnership, or community. See id. Each spouse can own property, whether acquired before or during the marriage, as a separate individual, and has the power to manage and dispose of his or her separate property. See id. at 233, 240. Other property is owned together equally as community property. See id. at 233. For a brief description of the community property system, see id. at 232-44.
English legal system's garbled version of French) considered a *feme covert*, that is, with no legal existence separate from her husband.\(^8\) Although a married woman could still hold title to real property, she generally could not exercise the powers associated with its ownership and was considered dependent on her husband for support, maintenance, and protection.\(^7\) A husband had the right to control his wife's real property, a right that was alienable by the husband.\(^8\) It was not until the end of the nineteenth century that all common law property states adopted statutes that removed the disabilities imposed by the coverture doctrine and gave married women legal control over all of their property.\(^9\)

Under the theory of Indian property rights adopted in *Johnson*, Indian tribes were also subject to significant restrictions on their property rights. Like *femes coverts*, they were recognized as holding title to their land, although it was a special kind of title that Chief Justice Marshall referred to as "title of occupancy"\(^90\) and which the Court has subsequently referred to as "aboriginal title"\(^91\) or "original Indian title."\(^92\) The Indians' ownership rights were restricted, and

88. See id. at 368; see also HALL ET AL., supra note 86, at 31-32 (discussing women's property rights in the early United States). These restrictions on married women's property rights arose early in the United States. In describing the position of married women and the legal unity of husbands and wives in the first half-century of English settlement, historian Mary Beth Norton has explained that "[a] wife's real estate became her husband's to manage; they could no longer contract with each other; [and] she could not make a will." MARY BETH NORTON, FOUNDING MOTHERS AND FATHERS: GENDERED POWER AND THE FORMING OF AMERICAN SOCIETY 73 (1996). Moreover, married women could not pursue their own legal interests in court without their husbands' cooperation, and "[t]he only legal procedure requiring a wife to act independently of her husband was the obligation that she consent formally and separately to any sale of family-owned real estate." *Id.*
89. See DUKEMINIER & KRIER, supra note 87, at 363. The first such statutes were adopted in the territories of Arkansas and Florida in the mid-1830s. See HALL ET AL., supra note 86, at 267. The first state to enact such a statute was Mississippi in 1839. See DUKEMINIER & KRIER, supra note 87, at 363. The New York statute, adopted in 1848, became the national model. See HALL ET AL., supra note 86, at 267.
91. Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 284 (1955). In an opinion that minimized the significance of tribal property rights, the Supreme Court held in *Tee-Hit-Ton* that the United States can take lands held by aboriginal title without any obligation to pay compensation. See *id.* at 279, 288-89. If, on the other hand, a tribe has "recognized" title, compensation must be paid. See *id.* at 277-78 ("Where the Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking.").
92. *Id.* at 279.
they were deemed legally incompetent to alienate their land to whomever they pleased. In the 1830s, Chief Justice Marshall indicated in his opinions for the Court in *Cherokee Nation v. Georgia* and *Worcester v. Georgia* that the federal government assumed a paternalistic, guardianship role with respect to the Indians and their land. Like married women, who were treated as under the "‘wing, protection, and cover’" of their husbands, the Indians were under the protection of the United States. Unlike the restrictions on married women’s property rights, however, the restrictions on Indian property rights have not been removed, and federal law continues to provide that tribes generally cannot alienate their lands without federal government approval. Furthermore, the federal government continues to have extensive involvement in the use and management of tribal lands through a number of statutory provisions, such as statutes requiring federal approval for leasing tribal lands for mining or for other purposes.

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93. See *Johnson*, 21 U.S. (8 Wheat.) at 574 ("[T]heir power to dispose of the soil at their own will, to whomsoever they pleased, was denied ...."); id. at 591 (holding that Indians are “incapable of transferring the absolute title [of their land] to others”).


95. 31 U.S. (6 Pet.) 515 (1832).

96. See, e.g., *Cherokee Nation*, 30 U.S. (5 Pet.) at 17 (“They may ... be denominated domestic dependent nations. ... [T]hey are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian. They ... address the [P]resident as their great father.”). In *Worcester*, Chief Justice Marshall took note of the treaty provisions under which the United States assumed the role of protector of the Cherokee Nation. See *Worcester*, 31 U.S. (6 Pet.) at 552, 555.

97. HALL ET AL., supra note 86, at 30 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *442*).

98. In *Worcester*, for example, Chief Justice Marshall explained that treaties entered into by the United States with Indian tribes provided that the tribes were under the protection of the United States; this practice, he observed, was introduced into Indian treaties by Great Britain. See *Worcester*, 31 U.S. (6 Pet.) at 551-52. In Chief Justice Marshall’s view, the Indians still maintained a right of self-governance, despite receiving the protection of the United States. See id. at 556.

99. Congress has provided by statute that “[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.” 25 U.S.C. § 177 (1994). Related Interior Department regulations provide:

Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary.


Thus, in *Johnson v. McIntosh*, the Supreme Court, while ignoring the agricultural activities and property rights of Indian women, subjected Indian tribes and Indian property rights to a system of paternalistic restrictions resembling the restrictions that American law had placed on married women and their property rights. Although the restrictions on married women’s property rights have been abandoned, the restrictions imposed on Indian property rights in *Johnson* continue to affect Indian tribes and their land.

B. The Actual State of Things: Indian Women as Farmers and Holders of Property Rights

“[Y]ou ought to hear & listen to what we women shall speak . . . for we are the owners of this land & it is ours.”

On the land east of the Mississippi River—where the vast majority of Americans lived in 1823—Indians had engaged in settled agricultural activity for many generations, and Indian women played the primary role in this activity. Numerous tribes recognized women as holding important rights with respect to tribal land and as owning their family’s home. The nature of Indian agriculture, women’s agricultural activity, and the property rights of Indian women in the Six Nations of the Iroquois Confederacy, the Algonquians of the Virginia tidewater, and the tribes of Illinois are examined in turn below.

1. The Iroquois Confederacy

Nothing, is more real, however, than the women’s superiority. It is they who really maintain the tribe, the

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101. See, e.g., 25 U.S.C. § 415 (1994) (providing for the leasing of Indian lands for public, religious, educational, recreational, residential, business, grazing purposes, and certain farming purposes, with the approval of the Secretary of the Interior).

nobility of the blood, the genealogical tree, the order of generations and conservation of the families. In them resides all the real authority: the lands, fields and all their harvest belong to them . . . . 103

The Iroquois Confederacy of central and western New York originally consisted of five tribes (the "Five Nations")104 who united politically and socially in the fifteenth century.105 These tribes were later joined by the Tuscaroras, who sought refuge with the Five Nations after being driven out of North Carolina by white colonists.106 The Five Nations formally adopted the Tuscaroras in the early eighteenth century, thus expanding the Confederacy to encompass the "Six Nations."107

The Iroquois occupied villages and cleared the land around them to plant crops.108 The size of the Iroquois fields varied from ten acres to several hundred acres, depending on the size of the community.109 Although Iroquois men cleared the land for planting,110 the bulk of


104. See DEBO, supra note 59, at 9 (noting that the Cayugas, Mohawks, Oneidas, Onondagas, and Senecas were known as the Five Nations).

105. See DENNIS, supra note 56, at 6-7.

106. See id. at 108.

107. See id.

108. See id. at 26. Archaeologists have not yet determined when Iroquois agriculture began. Although some archaeologists believe that agricultural activities on Iroquois lands by the Owasco people, the ancestors of the Iroquois, may have begun as early as 200 A.D., archaeologists have only been able to find certain evidence of agricultural life in the so-called Owasco period of 1000-1300 A.D. See id. at 44-45; see also RICHTER, supra note 56, at 14-15 (discussing agriculture during the Owasco period).

109. See DENNIS, supra note 56, at 27.

110. See Brown, supra note 103; at 157. Land was cleared by girdling trees and allowing them to die, and then burning the remaining brush. See DENNIS, supra note 56, at 26; Brown, supra note 103, at 157. Burning provided a number of other benefits, such
the work involved in agriculture—planting, cultivating, and harvesting—was done by women, who were also in charge of processing and storing agricultural products. Men contributed to the Iroquois diet by hunting and fishing. Women planted many varieties of corn, beans, and squash, which were referred to as the “Three Sisters” and were accorded spiritual significance. These staples were supplemented by other crops grown by women, such as melons, and by other foods gathered by women, such as berries, nuts, mushrooms, and sap for maple syrup. Women’s labor provided the major portion of Iroquois subsistence and ensured that the Iroquois had a varied, nutritious, and dependable diet that was far superior to the diet typical of Europeans before their initial contact with Indians.

Iroquois women developed organic agricultural methods that were efficient and provided high yields. Corn, beans, and squash were planted together in mounds. The corn stalks provided support for the growing beans, which in turn sheltered lower plants, collected rain, and slowed nitrogen exhaustion in the soil. The women

as enriching the soil by releasing minerals, stimulating growth by increasing soil temperature, releasing seeds and encouraging plant reproduction. See DENNIS, supra note 56, at 35.

111. See Brown, supra note 103, at 157; see also HURT, supra note 57, at 40 (describing eastern Indian women’s responsibilities in farming). Iroquois men were often away for long periods of time. See Brown, supra note 103, at 157; see also Nancy Bonvillain, Gender Relations in Native North America, 13 AM. INDIAN CULTURE & RES. J., No. 2, 1989, at 1, 15 (noting that men were often away on hunting, trading, or war expeditions).

112. See DENNIS, supra note 56, at 28.

113. See Brown, supra note 103, at 157. Women also fished and sometimes joined hunting expeditions. See id. After European contact, men also made important contributions to the Confederacy’s economy through trading with Europeans. See Diane Rothenberg, The Mothers of the Nation: Seneca Resistance to Quaker Intervention, in WOMEN AND COLONIZATION: ANTHROPOLOGICAL PERSPECTIVES 63, 70-71 (Mona Etienne & Eleanor Leacock eds., 1980).

114. See DENNIS, supra note 56, at 28; Brown, supra note 103, at 160. For a description of Seneca stories about the origins of cultivation and women’s religious ceremonies performed in connection with agricultural activities, see Jensen, supra note 63, at 425. There are no transcripts from early Iroquois women or other Indian women about their role in agriculture. As a result, any discussion of Indian women’s historical agricultural activities must be based on a careful reading of accounts provided by others. See id. at 424.

115. See Brown, supra note 103, at 161.

116. See DENNIS, supra note 56, at 28; see also id. at 36 (“[M]aize provided the basis of [the] Five Nations’ subsistence . . . .”).

117. See Brown, supra note 103, at 161.

118. See DENNIS, supra note 56, at 27.

119. See id.

120. See id. at 28; see also id. at 27 (“[F]armers benefitted from the natural nitrogen fixation that occurs as bacteria develop at the roots of leguminous plants.”); HURT, supra
reduced erosion and soil leaching by planting in the hollows left by
the previous year's cornstalks.¹²¹

Early European observers took note of the Iroquois’s extensive
agricultural activities and of Iroquois women’s role in tribal
agriculture. For example, French soldiers, engaged in a 1666
campaign against the Onondagas, described cornfields extending for
two miles on either side of the Iroquois town, and soldiers engaged in
a 1687 campaign against the Senecas reported finding and destroying
1,200,000 bushels of standing and stored corn in four Seneca
villages.¹²² In his four-volume study of Indians, the early eighteenth-
century Jesuit missionary Father Joseph-Francois Lafitau included an
illustration of Iroquois agricultural activities that showed women
working in the fields and collecting sap from trees.¹²³ Lafitau’s work
was published in 1724,¹²⁴ almost a century before Johnson v. 
McIntosh was decided. Mary Jemison, a white woman who was
adopted into the Seneca Nation in the eighteenth century, directly
experienced the agricultural activities of Iroquois women by working
with her adoptive Seneca relatives in their fields.¹²⁵ Cadwallader
Colden, who published the first English account of the Iroquois
political system in 1727,¹²⁶ observed that Iroquois women “perform
all the Drudgery about their Houses, [and] they plant their Corn, and
labour it, in every Respect.”¹²⁷ Even closer to the time of the
Johnson decision, General George Washington timed a 1779 attack
on the Iroquois on the basis of their agricultural activities, noting the
importance of destroying Iroquois crops at a time when it would be
too late in the season to replant them.¹²⁸ Evidently not all whites
were as blind to the existence of Indian agriculture as Chief Justice
Marshall and his colleagues appear to have been.

note 57, at 34 (discussing the benefits of planting beans with corn); infra note 197
(discussing the benefits derived from growing corn, beans, and squash together).
¹²². See id. at 27.
¹²³. See id. at 29 (reprinting an illustration from LAFITAU, AMERICAN INDIAN
CUSTOMS, supra note 103, at plate VII). The women in the fields appear to be cultivating
the soil with hoes and sowing seed. One woman is collecting sap from trees while another
woman is tending three large pots (presumably filled with sap) which are suspended over
fires in a partially open structure. See id.
¹²⁴. See id.
¹²⁵. See Brown, supra note 103, at 158; see also JAMES AXTELL, THE INVASION
WITHIN: THE CONTEST OF CULTURES IN COLONIAL NORTH AMERICA 324 (1985)
(discussing Mary Jemison’s description of Indian women’s work).
¹²⁶. See Jacobs, supra note 103, at 501.
¹²⁷. COLDEN, supra note 73, at xxxii.
The Iroquois regarded land as belonging to the community129 and to both present and future generations.130 Individual property rights with respect to particular land were based on continuous use, rather than on the idea of transferable title that is central to land ownership in the Western legal tradition.131 In other words, "the [individual property] right was a right to use, not to transfer in the market place."132 Because of the focus on use as the basis of individual property rights, Iroquois men did not have individual property rights in the fields that they had cleared because they did not use them.133 Instead, Iroquois society recognized the women—who, as members of a clan or as individuals,134 used the land by planting, tending, and harvesting crops—as having property rights in the land.135 The right to use the land could be passed on to the next generation.136 Because property rights are developed by each society to suit its own particular needs,137 the Iroquois did not recognize


130. See Snyderman, supra note 102, at 17.

131. See Tooker, supra note 129, at 109, 116. The Iroquois's focus on use as the basis for property rights is not unique among Indian tribes. See, e.g., Begay v. Keedah, 19 Indian L. Rep. (Am. Indian Law. Training Program) 6021, 6023 (Navajo 1991) (discussing the "use it or lose it" aspect of Navajo land tenure). One area of American property law does focus on continuous use as the basis for property rights. Under the doctrine of adverse possession, a person who continuously occupies another's land gains title to it under certain circumstances. See generally CUNNINGHAM ET AL., supra note 85, at 807-15 (discussing adverse possession).

132. HAROLD E. FEY & D'ARCY McNICKLE, INDIANS AND OTHER AMERICANS: TWO WAYS OF LIFE MEET 21 (rev. ed. 1970); see also Snyderman, supra note 102, at 15 (noting that for Indians, "land is neither an item of booty to be won or lost nor a commodity to be bought or sold").

133. See Tooker, supra note 129, at 116.

134. See Shafer, supra note 129, at 83 (noting that women cultivated both the fields of their clan and their own individual fields).

135. See id.

136. See id. at 83-84 (noting that "the land itself could not be inherited, [but] the right to use [and occupy] it could be passed on").

137. In Johnson, Chief Justice Marshall described property rights as being defined by society: "[T]he right of society, to prescribe those rules by which property may be acquired and preserved is not, and cannot be drawn into question ...." Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 572 (1823).
individuals as holding the same property rights with respect to the land that the Western legal system recognizes as accompanying land "ownership,"\textsuperscript{138} such as the right of alienation.\textsuperscript{139} For the Iroquois, land ownership, in the sense of absolute title to land, was not a meaningful concept until whites sought to buy Iroquois land.\textsuperscript{140} Those individual property rights with respect to land that Iroquois society did recognize, such as the right to control its use and the disposition of the crops produced from it,\textsuperscript{141} however, were held by women. Thus, in the Iroquois Confederacy, the land on which the Iroquois depended for sustenance in effect "belonged" to women, leading some observers to report that Iroquois women were the "owners" of the land.\textsuperscript{142}

Although the Iroquois presumably developed their theory of individual property rights in land to suit their own particular needs and attitudes toward the land, their theory appears strikingly similar to some of the key elements of the labor theory of private property rights developed by John Locke. In his Second Treatise of Government,\textsuperscript{143} first published in 1689, Locke emphasized labor on the land as the basis for private property rights in it. Each man (to use Locke's terminology) "has property in his own person" and the "labour of his body, and the work of his hands,... are properly his."\textsuperscript{144} When a man mixes his labor with the land by changing it from its natural state, he has "joined to...[the land] something that is his own, and thereby makes it his property."\textsuperscript{145} In other words, "[a]s much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, inclose it from the common."\textsuperscript{146}

\begin{itemize}
\item \textsuperscript{138} See generally CUNNINGHAM ET AL., supra note 85, at 2-7 (discussing ownership and rights accompanying ownership).
\item \textsuperscript{139} See Snyderman, supra note 102, at 17, 19 (stating that neither individuals nor the tribe could sell the land).
\item \textsuperscript{140} See Rothenberg, supra note 113, at 68; see also Wilcomb E. Washburn, Red Man's Land—White Man's Law: A Study of the Past and Present Status of the American Indian 143-45 (1971) (describing the introduction of European real property concepts to the Americas, including the idea that land could be sold).
\item \textsuperscript{141} See Brown, supra note 103, at 162.
\item \textsuperscript{142} See, e.g., Hewitt, supra note 129, at 487 (discussing the Iroquois women's ownership of the land); Tooker, supra note 129, at 116 (discussing land ownership in Iroquois society).
\item \textsuperscript{143} John Locke, Second Treatise of Government—An Essay Concerning the True Original Extent and End of Civil Government 18 (C.G. MacPherson ed., Hackett Publ'g Co. 1980) (1689).
\item \textsuperscript{144} Id. at 9.
\item \textsuperscript{145} Id.
\item \textsuperscript{146} Id. at 21.
\end{itemize}
The acts Locke identified as forming the basis for property rights were the very acts that Iroquois women had performed for generations and that Iroquois society recognized as creating certain property rights in a particular plot of land. Locke's *Second Treatise* was even cited by the defendants in the *Johnson* opinion, but because the Court did not acknowledge that Indians engaged in such activities, these activities could not provide a basis for recognition of Indians' absolute title to their lands.

Locke in fact shared the *Johnson* Court's misunderstanding of the Indian way of life, viewing all Indians as roving hunters rather than farmers. In his discussion of property rights in the *Second Treatise*, he referred to "the wild Indian, who knows no inclosure, and is still a tenant in common." Locke also described Indians' supposed failure to improve the land by labor:

> [There are] several nations of Americans ... who are rich in land, and poor in all the comforts of life; whom nature having furnished as liberally as any other people, with the materials of plenty, i.e., a fruitful soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory, there feeds, lodges, and is clad worse than a day-labourer in England.

Locke's reliance on this erroneous view of Indians allowed him to refer to "in-land, vacant places of America"; such places were "vacant" because of the presumed failure of the inhabitants to cultivate the land. Thus Locke, like the *Johnson* Court, relied on a mischaracterization of Indian land use to deny that Indians held the full property rights in land ordinarily enjoyed by non-Indians under

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147. See *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 569 n.b, 570 n.a (1823) (citing *LOCKE*, supra note 143, at ch. 5, §§ 26, 34-48) The defendants cited Locke as authority for denying Indian property rights:

   According to every theory of property, the Indians had no individual rights to land; nor had they any collectively, or in their national capacity; for the lands occupied by each tribe were not used by them in such a manner as to prevent their being appropriated by a people of cultivators.

   *Id.* at 570 n.a (citing *LOCKE*, supra note 143, at ch. 5, §§ 26, 34-40).

148. See supra notes 45-52 (discussing the *Johnson* Court's view of Indian land-use patterns).


150. *Id.* at 25-26.

151. *Id.* at 23; see also Robert A. Williams, Jr., *The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought*, 37 S. CAL. L. REV. 1, 3 n.4 (1983) (discussing Locke's application of the labor theory to Indians).
the labor theory of property rights.

Iroquois women’s land-use patterns also bring to mind the possession or occupancy theory, another theory developed by the common law to justify private property rights in land.\textsuperscript{152} Under this theory, possession or occupancy is the basis for title.\textsuperscript{153} In order to gain title, a possessor must engage in acts that demonstrate appropriation of the land for individual use.\textsuperscript{154} Through their extensive farming activities, Iroquois women demonstrated their physical possession of the land prior to the arrival of Europeans. By ignoring Indian women’s farming and treating all Indians as roving hunters, the Johnson Court ignored this possession as a basis for recognizing absolute tribal title to the land.\textsuperscript{155}

In the Iroquois Confederacy, women’s property rights were not limited to rights in agricultural lands; they also enjoyed property rights in their homes. The traditional home of the Iroquois was the longhouse, a multifamily dwelling formed by covering a framework of poles with sheets of bark.\textsuperscript{156} Because the Iroquois followed a matrilineal kinship system and a matrilocal residence pattern,\textsuperscript{157} the Iroquois household was composed of a number of related women with their husbands and children.\textsuperscript{158} Within each longhouse, the women of the lineage’s eldest living generation, the “matrons,” were dominant figures.\textsuperscript{159} Although Iroquois men constructed the longhouses, they performed this work on behalf of the women who

\textsuperscript{152} See generally Carol M. Rose, Possession as the Origin of Property, 52 U. Chi. L. Rev. 73, 74 (1985) (discussing the possession or occupancy theory of property ownership). Rose notes that the labor and possession theories have some characteristics in common. See id. at 74 n.8. Locke’s description of the Indians and their use of land seems to implicate both theories. See supra notes 149-51 and accompanying text (discussing Locke).

\textsuperscript{153} See Rose, supra note 152, at 75.

\textsuperscript{154} See id. at 76-77.

\textsuperscript{155} See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 590 (1823). Although the Court did not directly address possession as a basis for title, possession was addressed by the defendants. See id. at 569-70. The Court regarded the Indians’ occupancy (the nature of which it mischaracterized) only as the basis for the so-called “title of occupancy.” See id. at 587; supra notes 90-93 (discussing “title of occupancy”). See also Rose, supra note 152, at 85-87 (discussing the Court’s application of the possession theory in Johnson).

\textsuperscript{156} See Tooker, supra note 129, at 114.

\textsuperscript{157} In a matrilocal residence pattern, the husband lives with the wife’s family. See Richter, supra note 56, at 20. In a matrilineal kinship system, the lineage is traced through the female line. See id.

\textsuperscript{158} See Tooker, supra note 129, at 114. Each longhouse was approximately 20 feet wide, but its length depended on how many families lived in it. See id; see also Richter, supra note 56, at 20 (describing the matrilocal residence pattern and situations in which the matrilocal residence practice might not be followed).

\textsuperscript{159} See Richter, supra note 56, at 20; Brown, supra note 103, at 156.
The longhouse was conceived of as both the physical and the figurative dwelling place of the Iroquois, who referred to themselves as the "people of the longhouse" and envisioned the Iroquois Confederacy as a longhouse divided into geographical compartments, each occupied by one of the Iroquois tribes. The Iroquois saw their ties of kinship, traced through women, as binding them together both in the longhouses in which they dwelled and in the longhouse that symbolized the Confederacy. As was the case with cultivated land, because the longhouses were used more by women, they were regarded as the property of women, who controlled access to them.

In sum, agriculture, which was primarily the work of women, played a crucial role in the Iroquois tribal economy. Because of their intensive use of the land, Iroquois women held important property rights, including the right to control the land and the crops produced upon it. Women also held property rights in the longhouses, the traditional Iroquois dwelling places. Thus, where both land and houses were concerned, Iroquois society regarded women as the holders of the most important individual property rights. The Johnson Court's approach to Indian property rights ignored the extensive property rights to which Iroquois women were entitled, both under the Iroquois theory of property rights and under the labor and possession theories developed under the English legal system inherited by the United States.

2. The Virginia Algonquians

"[T]he men bestowe their times in fishing, hunting, wars and such manlike exercises... [while the] women and children do the rest of the worke."
The Virginia Algonquians lived in the tidewater region of what is today the State of Virginia. Although Spanish explorers may have been the first Europeans to have contact with them, the first detailed accounts of the people of the tidewater region were written by Captain John Smith and other Englishmen from the colony of Jamestown. When the Jamestown colonists arrived in 1607, most of the tribes of the area were part of a larger chiefdom governed by Powhatan as the paramount chief.

In the seventeenth century, the Virginia Algonquians resided in villages of varying sizes, which were generally located near rivers and marshlands and in close proximity to land suitable for agriculture. The houses resembled the longhouses of the

166. See Christian F. Feest, Virginia Algonquians, in 15 HANDBOOK OF NORTH AMERICAN INDIANS 253, 253 (Bruce G. Trigger vol. ed. & William G. Sturtevant general ed., 1978). The tidewater region is divided into four peninsulas by the Potomac, Rappahanock, York, and James Rivers. See id. The term “tidewater” refers to the ebb and flow of the tide in these rivers. See POTTER, supra note 70, at 8.

167. See Feest, supra note 166, at 254. The French are the other likely candidates. See POTTER, supra note 70, at 161; see also Nancy Oestreich Lurie, Indian Cultural Adjustment to European Civilization, in SEVENTEENTH-CENTURY AMERICA: ESSAYS IN COLONIAL HISTORY 33, 34-35 (James Morton Smith ed., 1959) [hereinafter SEVENTEENTH-CENTURY AMERICA] (describing Spanish and French contacts).

168. See POTTER, supra note 70, at 8. Earlier English contacts were made in the 1580s. See id. at 162 (stating that English exploration began in 1585); Feest, supra note 166, at 254 (noting that the English colonists of Roanoke made contact in 1584).

169. See POTTER, supra note 70, at 1.

170. See Lurie, supra note 167, at 40 (noting that about 30 tribes, including most importantly the Appomattox, Arrohattoc, Mattaponi, Pamunkey, Powhatan, and Youghatanund, were subject to Powhatan’s influence or control).

171. See Feest, supra note 166, at 255. According to Smith’s accounts, Powhatan held the title of mamanatowick, meaning “great king.” POTTER, supra note 70, at 14. Powhatan’s subordinates, the district chiefs (known as werowances if they were men and weroansquas if they were women), governed the local chiefdoms. See id. For a further description of the political organization of Powhatan’s chiefdom, see id. at 14-19. The precise nature of Powhatan’s chiefdom is the subject of scholarly debate. While Thomas Jefferson referred to the Virginia Algonquians as the “Powhatan Confederacy,” a term that became entrenched in the scholarly literature on the subject, Nancy Oestreich Lurie has argued that in 1607 Powhatan was in reality “in the process of building something that approximated an empire.” Lurie, supra note 167, at 40. Moreover, Helen Rountree has argued that “Confederacy” is inaccurate and prefers to refer to Powhatan’s chiefdom as a “sophisticated government.” HELEN C. ROUNTREE, POCAHONTAS’S PEOPLE: THE POWHATTAN INDIANS OF VIRGINIA THROUGH FOUR CENTURIES 3 (1990). Other historians have referred to Powhatan’s “mantle of authority.” See, e.g., Brown, supra note 165, at 26, 43 n.4; Peter H. Wood et al., Introduction to POWHATAN’S MANTLE: INDIANS IN THE COLONIAL SOUTHEAST, at xv (Peter H. Wood et al. eds., 1989).

172. The villages varied in size from a few to up to 100 houses. See Feest, supra note 166, at 259.

173. See POTTER, supra note 70, at 28-29.
Iroquois\textsuperscript{174} and, in many villages, were located some distance from each other, surrounded by their agricultural fields.\textsuperscript{175}

Early English accounts of Virginia are filled with references to Indian fields along the rivers.\textsuperscript{176} John Smith described the preparation of the fields for planting corn, referring to it as "the greatest labor they take."\textsuperscript{177} New fields were prepared for planting by first girdling and burning trees, and then cutting down some trees while leaving others standing.\textsuperscript{178} Smith described how the remaining trees protected the corn from the wind and the heat of the sun.\textsuperscript{179}

Smith also reported the role women played in agriculture, describing how they planted corn together with beans\textsuperscript{180} or pumpkins.\textsuperscript{181} The women hoed the crops regularly during the growing season to retard weed growth.\textsuperscript{182} Women's farming played a crucial role in sustaining the life of the Virginia Algonquians because of the importance of agricultural products in their diet. Corn alone contributed at least fifty percent to their yearly subsistence, and they consumed it in various forms during most of the year.\textsuperscript{183}

\begin{footnotes}
  \footnotetext{174}{See supra notes 156-64 and accompanying text (describing the Iroquois longhouses). The Virginia Algonquian houses were constructed from arched poles covered with bark or reed mats. See Feest, supra note 166, at 259. Some villages also had mortuary temples, which contained the remains of chiefs and were also used to store goods received by chiefs as tribute. See POTTER, supra note 70, at 26.}
  \footnotetext{175}{See POTTER, supra note 70, at 29. A few villages were enclosed within protective palisades. See id.; Feest, supra note 166, at 259.}
  \footnotetext{176}{See Wilcomb E. Washburn, The Moral and Legal Justifications for Dispossessing the Indians, in SEVENTEENTH-CENTURY AMERICA, supra note 167, at 15, 23; see also Brown, supra note 165, at 32-33 (describing English opinions of the Algonquians' division of labor); Smits, supra note 63, at 285 (describing English accounts of Indian fields).}
  \footnotetext{177}{SMITH, supra note 71, at 15.}
  \footnotetext{178}{See POTTER, supra note 70, at 33; see also SMITH, supra note 71, at 15 ("To prepare the ground they do bruise the bark of the trees near the root, then do they scorch the roots with fire [so] that they grow no more."). The year after a field was burned, the Indians further prepared the area around the tree stumps by working it with wooden tools. See SMITH, supra note 71, at 15.}
  \footnotetext{179}{See POTTER, supra note 70, at 33. Leaving some of the trees standing, and not removing the stumps of the trees that were cut down, also retarded erosion, while the decaying stumps and roots replenished the nutrients in the soil. See id.}
  \footnotetext{180}{See id.; SMITH, supra note 71, at 15 ("They make a hole in the earth with a stick, and into it they put four grains of wheat [corn] and two of beans."). Planting beans with the corn helped to replenish the nitrogen content of the soil, the fertility of which could be damaged by continued planting of corn. See POTTER, supra note 70, at 33; see also infra note 197 (describing the benefits derived from growing corn, beans, and squash together).}
  \footnotetext{181}{See SMITH, supra note 71, at 16 (describing the planting of pumpkins "amongst their corn").}
  \footnotetext{182}{See id. at 15 (describing weeding by women and children).}
  \footnotetext{183}{See POTTER, supra note 70, at 40; see also SMITH, supra note 71, at 16 (describing various ways in which corn was consumed).}
\end{footnotes}
The Jamestown colonists demonstrated their appreciation of the Algonquian women's agricultural methods and products in a number of ways. The colonists traded copper and other items for the corn the women produced. After the Algonquians raised corn prices, perhaps in response to the devaluation of copper, the colonists began to take corn by force. The colonists also adopted the Algonquian women's agricultural methods after finding that the shortage of draft animals and farm laborers made English farming methods impractical. The colonists were also eager to appropriate the fields worked by Algonquian women and welcomed Indian rebellions as an excuse to seize land. Demand for Indian land grew as the colonists switched the focus of their farming from the food products grown by Indian women to tobacco. As the colonists increased in numbers, disputes over property ownership, hunting rights, and destruction of Indian crops by the colonists' livestock increased as well. Increasing numbers of Algonquians were forced to move to make way for the colonists' tobacco farming. As the Algonquians did so, they left the colonists to enjoy the cleared land that Algonquian women had worked for generations.

184. See POTTER, supra note 70, at 180.
185. See id. at 180-82. Copper was highly prized by the Algonquians as a symbol of authority. See id. at 180. Prior to the arrival of Europeans, the Algonquians obtained copper from several sources, including the region of the Great Lakes. See id. at 181. The Jamestown colonists brought copper to Virginia, and its abundance ultimately led to devaluation. See id. at 181-82.
186. See id. at 221. "[S]hort-fallow, plow agriculture," for example, was one method of English farming. Id.
187. See FRANCIS JENNINGS, THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST 80 (W.W. Norton & Co. 1976) (1975). One Jamestown colonist, for example, gloated over an Algonquian uprising in the following terms: "We, who hitherto have had possession of no more ground than their waste, and our purchase... may now by right of Warre, and law of Nations, invade the Country, and destroy them who sought to destroy us: whereby wee shall enjoy their cultivated places, turning the laborious Mattocke into the victorious Sword (wherein there is more both ease, benefit, and glory) and possessing the fruits of others['] labours. Now their cleared grounds in all their villages (which are situate in the fruitifallest places of the land) shall be inhabited by us, whereas heretofore the grubbing of woods was the greatest labour." Id. (quoting Edward Waterhouse, A Declaration of the State of the Colony and Affairs in Virginia (1622), in 3 THE RECORDS OF THE VIRGINIA COMPANY OF LONDON 1607-1622, at 541, 556-57 (Susan Myra Kingsbury ed., 1933)) (alteration in original).
188. See POTTER, supra note 70, at 185, 188. Tobacco production grew from 132,000 pounds in 1626 to over one million pounds in 1629. See id. at 188.
189. See id. at 196.
190. See id. at 221.
191. Archaeologists have noted how seventeenth-century English settlements followed Algonquian settlement patterns and have attributed this to the colonists' taking
In sum, the Virginia Algonquian women, like the women of the Iroquois Confederacy, were the chief agriculturalists of their tribe, and the products of their labor played a crucial role in the tribal economy. Thus, in Chief Justice Marshall's native State of Virginia, agriculture carried out by Indian women and reported by white observers existed long before the decision in Johnson v. McIntosh.

3. The Illinois Indians

"[They are] naturally industrious, and devote themselves to the cultivation of the soil.... Indian corn ... [is] to them what bread is to Frenchmen."

The Illinois Indians were a group of tribes, numbering as many as twelve, who shared a language and a tradition of common origin. The tribes that persisted the longest were the Cahokia, Kaskaskia, and Peoria, as well as the Michigamea and Tamaroa tribes, which were later absorbed into the Kaskaskia. When Europeans first visited their territory in 1673, the Illinois Indians were concentrated along the Mississippi River between modern day Arkansas and Iowa.

Agriculture has a long history in the aboriginal territory of the Illinois tribes. By 5000 B.C., Indians there were cultivating squash, which was later combined with corn and beans to form the basis of a complex system of agriculture. Like the Iroquois, the Illinois...
combined agriculture with hunting and fishing.\textsuperscript{198} Hunting and fishing were primarily the work of men, while agriculture was primarily the work of women.\textsuperscript{199} Corn was the main crop\textsuperscript{200} and provided sustenance on a year-round basis.\textsuperscript{201} Seventeenth-century European observers provided accounts of how the women gathered the corn crop, husked and dried the ears, threshed the ears by beating them with sticks,\textsuperscript{202} and then stored the corn in large storage pits.\textsuperscript{203} Although the cultivated lands were seen as belonging to the tribe as a whole and as inalienable, women were regarded as having property rights in the crops they grew and controlling the game that men brought back from hunting expeditions; men's property rights were limited to their own weapons and clothing.\textsuperscript{204}

Women were also in charge of the construction and care of the dwelling houses, which were oblong cabins constructed by covering frameworks of bent saplings with mats woven from rushes.\textsuperscript{205} These structures, which were large enough to house from six to twelve

of high nutritional value." \textit{Id.} at 7. Corn, beans, and squash also grow well when planted together. The beans replace the nitrogen that corn depletes from the soil. \textit{See id.} at 40. The cornstalks provide natural stakes on which the beans can climb, and the squash vines discourage the growth of weeds by covering the ground at the base of the cornstalks. \textit{See id.; see also} \textit{WILLIAM CRONON, CHANGES IN THE LAND: INDIANS, COLONISTS, AND THE ECOLOGY OF NEW ENGLAND} 43-44 (1983) (describing Samuel de Champlain's observations of Indians planting corn, beans, and squash, and the agricultural and nutritional benefits of combining these crops); \textit{id.} at 48 (describing the benefits of planting beans with corn); \textit{POTTER, supra} note 70, at 33 (describing how corn and beans were planted together by seventeenth-century Algonquians in the Virginia-Maryland tidewater and how beans replenished the nitrogen content of the soil); \textit{supra} notes 119-20 and accompanying text (describing the Iroquois's planting of corn, beans, and squash together).

\textsuperscript{198} \textit{See} \textit{Callender, supra} note 193, at 674.

\textsuperscript{199} \textit{See id.; see also HURT, supra} note 57, at 40 (explaining that among eastern Indians in general, the men prepared the soil for planting, while the women planted, weeded, and harvested).

\textsuperscript{200} \textit{See Callender, supra} note 193, at 674. The women planted the corn in May and harvested it in July and August. \textit{See id.} The Illinois also grew pumpkins, which were hollowed out, sliced, and then dried, and watermelons. \textit{See HURT, supra} note 57, at 35. The dried pumpkin kept for several months and was cooked with meat and corn. \textit{See id.}


\textsuperscript{202} \textit{See} \textit{HURT, supra} note 57, at 35 (describing observations made by several Frenchmen).

\textsuperscript{203} This was a common practice among the Indians of the Midwest. \textit{See id.} at 37. The storage pits were typically eight feet in diameter and from five to six feet deep with an opening two to three feet wide. \textit{See id.; see also ALVORD, supra} note 201, at 40 (noting that the Illinois Indians stored their crops in pits).

\textsuperscript{204} \textit{See ALVORD, supra} note 201, at 42.

\textsuperscript{205} \textit{See id.} at 41-42.
families,\textsuperscript{206} resembled the longhouses of the Iroquois.\textsuperscript{207}

In sum, the Illinois tribes, like the tribes of the Iroquois Confederacy and the Virginia Algonquians, traditionally practiced settled agriculture that was largely carried on by women. Thus, the depiction of the Indian way of life in \textit{Johnson v. McIntosh}\textsuperscript{208} was inaccurate with respect to the very tribes whose land conveyances were at issue and whose power to transfer rights in the land farmed by them for generations was denied by the Court. Moreover, this denial had its greatest impact on Indian women, who were recognized by their tribes, and logically should have been recognized under the labor and possession theories of property rights, as holders of individual property rights by virtue of their agricultural activities.

\section*{III. From Farmers to Farm Wives: The Allotment Program and the Domestication of Indian Women}

The American people deeply sympathize with the landless agriculturists of Ireland .... If these people, with the advantages of a thousand years of enlightened culture, are unable to live and prosper without an ownership in the soil, how can we expect that a race, many of whom are just emerging from barbarism, degraded by centuries of gross ignorance and superstition, unaided by the humane influences of civilization, can prosper under like disadvantages.\textsuperscript{209}

In \textit{Johnson v. McIntosh}, the Supreme Court ignored centuries of Indian agriculture, carried on in many tribes by women, and deprived Indian tribes of full legal title to their lands. The Court imposed on Indians, without their participation or consent, a legal doctrine that Europeans had developed to usurp title to land from non-Christian peoples who occupied it.\textsuperscript{210} In effect, the Court absorbed Indian lands into the United States's system of land ownership by recognizing individual ownership of the lands and by granting the United States legal title to Indian lands. The right to \textit{occupy} the land, however, remained with the tribes under \textit{Johnson}, until

\begin{itemize}
  \item \textsuperscript{206} See id. at 41.
  \item \textsuperscript{207} See supra note 156 and accompanying text (describing the Iroquois longhouses).
  \item \textsuperscript{208} See supra notes 45-56 and accompanying text (discussing the \textit{Johnson} Court's depiction of Indian land-use patterns).
  \item \textsuperscript{209} 1879 \textit{BOARD OF INDIAN COMMISSIONERS ANN. REP.} 6.
  \item \textsuperscript{210} See supra notes 31-40 and accompanying text (discussing the Discovery Doctrine).
\end{itemize}
extinguished by the United States by purchase or conquest.\textsuperscript{211} The Court left the manner in which the tribes used the land they occupied, either communally or individually, to their discretion.\textsuperscript{212}

Once the \textit{Johnson} Court had recognized the United States's authority to end the Indian right of occupancy, by purchase or by conquest,\textsuperscript{213} the government grew more eager to exercise this authority. Later in the nineteenth century, the government became increasingly interested in controlling how Indians held and used the land they occupied and in reducing the quantity of this land in order to free up more land for white settlement.\textsuperscript{214} Moreover, the government became increasingly interested in destroying Indian culture and assimilating Indians into the Euro-American way of life, including the Euro-American way of owning and using land.\textsuperscript{215} As one Commissioner of Indian Affairs (the "Commissioner") put it, the "final achievement" would be "the complete extinguishment of the Indian race by its absorption into the body politic of the country."\textsuperscript{216}

In keeping with these goals, the federal government began a concerted effort to assimilate the Indians by, among other actions, providing them with individual title to land. The key piece of federal legislation, the General Allotment Act of 1887 (or "Dawes Act"),\textsuperscript{217} and accompanying government programs, sought to transform Indian men into farmers and Indian women into model farm wives. The government regarded the replacement of tribal land holding with individual ownership of land as essential to assimilation.\textsuperscript{218} Land on many reservations was divided up and allotted to individual Indians, initially with preferential treatment for Indian men as presumed heads of households. The preference for men as landowners reflected contemporary Euro-American attitudes towards women

\begin{itemize}
\item \textsuperscript{211} See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 587 (1823).
\item \textsuperscript{212} See id. at 574 (noting that under the Discovery Doctrine, tribes had "a legal as well as just claim . . . to use [the land] according to their own discretion").
\item \textsuperscript{213} See id. at 587.
\item \textsuperscript{214} This policy was embodied in the General Allotment Act of 1887. See infra notes 220-307 and accompanying text.
\item \textsuperscript{215} For a discussion of the assimilation movement, see generally Ragsdale, supra note 21. Professor Ragsdale also discusses the assimilationists' efforts to impose private ownership of land. See id. at 404, 406-07, 411-15.
\item \textsuperscript{216} 1900 \textit{REPORT OF COMMISSIONER OF INDIAN AFFAIRS,} H.R. DOC. NO. 5, 56th Cong., 2d Sess. 49.
\item \textsuperscript{218} See Ragsdale, supra note 21, at 411-13 (discussing assimilationists' attitudes toward communal and individual land ownership); see also infra notes 227-44 and accompanying text (discussing the Dawes Act and the attitudes toward land ownership underlying it).
\end{itemize}
and property, but ignored the fact that women traditionally held the most important individual property rights regarding land in many tribes. In addition, government agents provided farming supplies and training to Indian men, despite the fact that in many tribes' traditional divisions of labor, agriculture was women's work. Government officials and others viewed agricultural labor as inappropriate work for women and believed that women's prominent roles in tribal agriculture demonstrated Indian men's idleness and Indian women's virtual enslavement. White women were hired as "field matrons" to teach Indian women to perform the role that Euro-American society deemed appropriate for their gender. The goal of government policy makers was the transformation of Indian families into self-sufficient farm families, based on a gendered division of labor that policy makers unquestioningly accepted as essential to civilization.

This Part of the Article examines the government's efforts to transform Indians in general, and Indian women in particular, through the allotment of Indian lands and accompanying government programs. Part III.A discusses the enactment and implementation of the Dawes Act, Indian reactions to the Act, and the treatment of Indian men under the allotment program. Part III.B discusses how the allotment program treated Indian women and their property rights. Part III.C discusses the field matron program and the role it was intended to play in the effort to transform Indian women into model farm wives.

A. The Dawes Act and the Launching of the Allotment Program

"They have got as far as they can go, because they own their land in common.... [T]here is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress."219

Although the government had made some allotments of land to individual Indians prior to 1887, the Dawes Act established the first general government program for the division of reservation land into individual allotments. Rather than providing an equal allotment to each inhabitant of a reservation and determining the allotments’ size by dividing up the reservation’s total acreage among all allottees, the Act limited both the identity of the allotments’ recipients and the size of the allotments. After the President determined that a particular reservation should be allotted, the Act provided an allotment of 160 acres for each head of a family, 80 acres for each single person over age eighteen and each orphan under age eighteen, and 40 acres for each other single person under age eighteen. A patent would be issued in the name of each allottee, declaring that the allottee’s land was being held in trust by the government for 25 years, during which time any conveyances or contracts with respect to the land would be null and void. Citizenship would be conferred upon the allottees.
when the trust period expired and they had received patents in fee.\textsuperscript{223} After lands were allotted to all eligible members of a tribe, the government could negotiate with the tribe for the purchase of unallotted lands, for the purpose of conveying such "surplus" lands to settlers.\textsuperscript{224} Indian tribes thus lost, without their consent, the right to make use of these lands or simply to retain them for future use by the tribe and its members.\textsuperscript{225} In practice, specific reservations were selected for allotment in response to white pressure for Indian lands in particular areas.\textsuperscript{226}

A number of different motivations led to the enactment of the Dawes Act. Most government officials and self-proclaimed "friends of the Indian" viewed allotment as an important step in the civilization of the Indians and their assimilation into Euro-American society.\textsuperscript{227} They believed that individual ownership of land was one of the most effective mechanisms of the civilization process.\textsuperscript{228} The


\textsuperscript{224} See Dawes Act of 1887, ch. 119, § 5, 24 Stat. 388, 390 (codified as amended at 25 U.S.C. § 348 (1994)). Such negotiations could take place prior to the allotment of land to all members of a tribe "if in the opinion of the President it shall be for the best interests of said tribe." Id. No settler could receive more than 160 acres of the surplus land. See id. Purchases of surplus land had to be ratified by Congress. See id. Money paid by the United States to purchase land from a tribe was to be held in the U.S. Treasury for the use of the tribe, and such money, "with interest thereon at three per cent per annum," was to be "at all times subject to appropriation by Congress for the education and civilization of such tribe." Id.

\textsuperscript{225} See CARLSON, supra note 221, at 109.

\textsuperscript{226} See id. at 29-76 (discussing how land was allotted to the Indians); \textit{see also} Leonard A. Carlson, \textit{Federal Policy and Indian Land: Economic Interests and the Sale of Indian Allotments, 1900-1934}, \textit{57 Agric. Hist.} 33, 38-39 (1983) (discussing the limitations placed on land allotments). Whites also sought to influence which tracts were allotted to Indians to ensure that the best lands were sold as surplus lands. See OTIS, supra note 219, at 145-48 (discussing white influence on the designation of allotments).

\textsuperscript{227} See OTIS, supra note 219, at 3-6.

\textsuperscript{228} See OTIS, supra note 219, at 5, 9; \textit{see also} Lyman Abbott, \textit{Criticism of the Reservation System, excerpt reprinted in AMERICANIZING THE AMERICAN INDIANS: WRITINGS BY THE "FRIENDS OF THE INDIAN" 1880-1900,} at 31, 34-35 (Francis Paul Prucha ed., Bison Books 1978) (1973) [hereinafter AMERICANIZING THE AMERICAN INDIANS] (arguing that the reservation system should be abolished and tribal land should be allotted); Dussias, supra note 20, at 819-20 (discussing the allotment policy and its supposed links to civilization).
Commissioner of Indian Affairs (the "Commissioner") expressed this sentiment in his 1887 annual report, noting that the "homestead today is the greatest bulwark of American progress and liberty."\(^\text{229}\) Reservation agents voiced similar views; one of them, for example, explained in his 1889 report to the Commissioner that an Indian's "perfect and secure title" to his possessions would "alone imbue his mind with ideas of true civilization,"\(^\text{230}\) while another described accumulation of property as "the chief fundamental foundation of the structure of our civilization."\(^\text{231}\) For allotment proponents, tribal land holding was fundamentally inconsistent with civilization\(^\text{232}\) and led to laziness. The Commissioner explained in 1888 that "the degrading communism of the tribal-reservation system gives to the individual no incentive to labor, but puts a premium upon idleness and makes it fashionable. Under this system, the laziest man owns as much as the most industrious man."\(^\text{233}\) Allotment was to replace the Indian's "communism" with selfishness: "[H]e must be imbued with the exalting egotism of American civilization, so that he will say 'I' instead of 'We,' and 'This is mine,' instead of 'This is ours.'"\(^\text{234}\)

\(^\text{229}\) 1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. Doc. No. 1, pt. 5, 50th Cong., 1st Sess. 12.
\(^\text{231}\) Id. at 117 (report of Henry George, Colorado River Agency, July 30, 1889).
\(^\text{232}\) See OTIS, supra note 219, at 4, 11, 85.
\(^\text{233}\) 1888 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. Doc. No. 1, pt. 5, 50th Cong., 2d Sess. at lxxxix. For a contemporary argument for the superiority of individual property rights, see Jennifer Roback, Exchange, Sovereignty, and Indian-Anglo Relations, in PROPERTY RIGHTS AND INDIAN ECONOMIES 5, 6 (Terry L. Anderson ed., 1992). Roback notes that economic theorists claim private, that is, individual, property rights are more productive than, and hence superior to, communal or collective rights. See id.; see also Gary D. Libecap, Government Policies on Property Rights to Land: U.S. Implications for Agricultural Development in Mexico, 60 AGRIC. HIST. 32, 36 (1986) (arguing that collective property rights create efficiency problems).
\(^\text{234}\) 1888 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. Doc. No. 1, pt. 5, 50th Cong., 2d Sess., at lxxxix. The 1887 Report of the Commissioner of Indian Affairs described communal ownership, and other aspects of the Indians' existing tribal relations, as being so opposed to progress toward civilization that even New England Yankees would be pauperized under similar conditions:

Take the most prosperous and energetic section of our country—New England; give them their lands in common, furnish them annuities of food and clothing, send them teachers to teach their children, preachers to preach the gospel, farmers to till their lands, and physicians to heal their sick, and I predict that in a few years, a generation or two at most, their manhood would be smothered, and a race of shiftless paupers would succeed the now universally known "enterprising Yankee."

1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. Doc. No. 1, pt. 5, 50th Cong., 1st Sess. 7; see also Ragsdale, supra note 21, at 403 (noting that competitive individualism was to replace the communalistic, cooperative orientation of tribal society).
Allotment was also intended to alter the nature of the Indian family and was linked to the conversion of the Indians to Christianity.

The supporters of allotment also argued that individual ownership would provide the Indians with greater security in their land, particularly as against whites who were interested in settling on tribal land that they considered unused. Of course, this security would not extend to the land that was taken from the tribes for conveyance to settlers, but many allotment supporters believed that it was better to provide "security" for some land through allotment rather than run the risk of the Indians losing even more as a result of white demands for land. As one prominent group, the Indian Rights Association, noted, "'The friends of the new law think half a loaf better than no bread, even for Indians.'"

While many "friends of the Indian" supported the Dawes Act because of its supposed benefits for Indians, other supporters had less philanthropic motivations. Demand for Indian lands by railroads, mining and lumber interests, and would-be settlers—both native-born Americans and an ever-increasing number of European immigrants—provided perhaps the most powerful motivation for supporting the Act. Some allotment opponents identified taking...
Indian lands as the real aim of the allotment program and viewed any claimed benefits as mere pretexts.\textsuperscript{242} This interpretation seems particularly perceptive in light of the large-scale loss of Indian land that ultimately resulted from the allotment program.\textsuperscript{243} Many allotment supporters, however, would have considered this land loss entirely appropriate where, in their view, Indians were not making use of the land or its natural resources, "which should be developed in the interests of civilization."\textsuperscript{244}

Government officials and other observers reported varying Indian reactions to allotment. The Commissioner's official policy was to regard the Indians as eager for allotment,\textsuperscript{245} and some reservation agents reported Indian demands for allotment, both before and after the enactment of the Dawes Act.\textsuperscript{246} Although some of the claimed Indian enthusiasm for, or at least acceptance of, allotment might have been attributable to reservation agents' wishful thinking\textsuperscript{247} or high pressure tactics,\textsuperscript{248} some Indians may have had a genuine desire for allotment, hoping that patents in fee would finally protect them from white incursions.\textsuperscript{249} As one Omaha Tribe member who reportedly asked for an allotment explained, "'The road our fathers walked is gone, the game is gone, the white people are all about us.... We want titles to our lands that the land may be secure for access to Indian lands. See id. at 19; see also id. at 22-30 (discussing the expansion of the railroads and its effect on Indian lands).

242. Senator Teller, for example, argued that allotment was in the interest of land speculators and described an earlier allotment bill as "'a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth.' " Id. at 18 (quoting 11 CONG. REC. 934 (1881) (statement of Senator Teller)). In 1880, the minority report of the House Indian Affairs Committee commented on the earlier bill as follows:

The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them. ... If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse. Id. at 19 (quoting H.R. REP. No. 46-1576, at 10 (1880)).

243. See infra note 268 and accompanying text (describing the loss of land resulting from the program).

244. OTIS, supra note 219, at 17.

245. See id. at 40.

246. Agents reported Indian demand for allotment as early as 1876, with such activity increasing up to 1887. See id. For examples of reports of Indian demand for allotment after 1887, see id. at 89.

247. Agents and others may have been influenced in their estimations of the success and acceptance of allotment efforts by their knowledge that their job was to further the allotment program. See id. at 26.

248. See id. at 89-90.

249. See id. at 41, 48-49.
to our children."’

Other Indians expressed opposition to allotment, often on the basis of allotment’s interference with their existing tribal land-use system.251 For most Indians, individual ownership of land was fundamentally inconsistent with their sense of community and contrary to important religious principles related to land.252 For example, in explaining the Nez Perces’ opposition to allotment, one chief remarked, ‘‘They asked us to divide the land, to divide our mother . . . upon whose lap we had been reared.’’253 From this perspective, attaching property concepts to the earth was sacrilegious.254

After the allotment program was launched, some agents reported success,255 while others reported vigorous Indian resistance that continued into the twentieth century.256 Some Indian opponents

250. Id. at 41-42 (quoting Alice C. Fletcher & Francis LaFlesche, The Omaha Tribe, in TWENTY-SEVENTH ANNUAL REPORT OF THE BUREAU OF AMERICAN ETHNOLOGY 15, 637 (1911) (quoting Omaha Tribe member)). For other possible explanations of Indian allotment support, such as the desire for the prosperity and prestige that some Indians believed allotment would bring, see id. at 90-91.

251. See id. at 44. The tribes may also have been influenced by the failure of some of the previous allotment efforts. See id. at 49-56 (describing the allotment of the land of some tribes, such as the Omahas, Creeks, Catawbas, and Chippewas; Indian opposition to farming and allotment; and the loss of Indian land resulting from allotment).

252. See Lacey, supra note 63, at 339; see also Holm, supra note 221, at 115-16 (describing the unbalancing of order and harmony that would result from allotment). Indians, including Indian women, had also expressed opposition to earlier allotment efforts aimed at specific tribes. For example, in 1818, Cherokee women voiced opposition to the proposed allotment of Cherokee land:

“We have heard with painful feelings that the bounds of the land we now possess are to be drawn into very narrow limits. The land was given to us by the Great Spirit above as our common right, to raise our children upon, & to make support for our rising generations. We therefore humbly petition our beloved children, the head men and warriors, to hold to the last in support of our common rights . . . .”


253. OTIS, supra note 219, at 12 (quoting 11 CONG. REc. 781 (1881) (quoting a tribal chief)).

254. See id. at 53. A Blackfoot chief expressed similar sentiments in rejecting a proposed treaty: “We cannot sell the lives of man or animals; therefore we cannot sell this land. It was put here for us by the Great Spirit, and we cannot sell it because it does not belong to us.’’” Lacey, supra note 63, at 339 (quoting Blackfoot chief).

255. See OTIS, supra note 219, at 88-91.

256. See id. at 91. For an examination of one tribe’s opposition to allotment after the enactment of the Dawes Act, see generally The Prairie Potawatomi: Resistance to Allotment, THE INDIAN HISTORIAN, Fall 1976, at 27, 27-31. See also infra notes 379-83 and accompanying text (discussing field matrons’ comments on Indian reactions to allotment).
of allotment were concerned that allotment would eventually result in the loss of their land and expressed fear of white economic and cultural penetration, which would undermine tribal solidarity and traditional ways of life. Reservation agents tried to discount the opponents of the allotment program by labeling them "conservatives" and blaming some opposition on old chiefs who feared losing their authority; agents also referred to supporters of allotment as "progressives." The Commissioner expected that on some reservations a majority of the Indians would oppose allotment because the Indians "were loath to give up their savage customs, and view with suspicion any innovation upon their nomadic mode of life." The "more advanced and better-informed Indians," the Commissioner claimed, "hail[ed] the act as the dawn of their emancipation from the bonds of barbarism." The Commissioner attributed continuing tribal opposition to "personal and selfish motive[s]" and blamed influential "squaw men and half-breeds, whose chief interest in the Indian is to drive sharp bargains with him and to make money out of his ignorance, unsuspecting confidence, and characteristic liberality and hospitality" for some of the opposition. The Commissioner also blamed some Indian opposition on white citizens who were opposed to the Act; their criticism tended "only to disquiet the more ignorant class of Indians." Ultimately, Indian attitudes toward allotment were irrelevant because the government was determined to proceed with the allotment program despite Indian opposition. In 1888, one reservation agent succinctly described the government's attitude: "There must be no yielding to Indian whims nor compromise to gratify Indian caprice, at the sacrifice of law and good

257. See OTIS, supra note 219, at 92-93.
258. See id. at 93-95; see also 1889 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 51st Cong., 1st Sess. 204 (report of Leo E. Bennett, Union Agency, Sept. 21, 1889) ("The greatest opposition among the true Indians arises from an apprehension that allotment means dissolution of the tribal autonomy . . . .")
259. OTIS, supra note 219, at 45.
261. Id.
262. Id. "Squaw men" was the name given by government officials to white men who married Indian women, See infra notes 304-06 and accompanying text (discussing "squaw men").
263. 1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. DOC. No. 1, pt. 5, 50th Cong., 1st Sess. 8.
government.' The "red man" was expected to give up his "whims" and ultimately appreciate the benefits of allotment:

[W]hen once he is located on his homestead and is brought to realize the dignity as well as the responsibility of his new position and relations, all opposition to this benign measure will disappear, and his heart will swell with gratitude to the Government for the blessings and opportunities thereby conferred upon him.

The government's enthusiasm for allotment is evidenced by the speed with which allotments were approved. From 1887 through 1900, the government approved over 53,000 allotments covering nearly 5,000,000 acres. In 1900, the government claimed that 10,835 Indian families were living on and cultivating allotted lands and that Indians cultivated 343,351 acres during that year. At the same time, the program resulted in a considerable decline in the total acreage of Indian land. For example, Indian land totaling 155,632,312 acres in 1881 dropped to 104,314,349 acres by 1890, and by 1900 only 77,865,373 acres remained, reflecting losses of land that were so substantial that the Dawes Act was eventually recognized as a failure and, in 1934, further allotments were prohibited.

In addition to imposing individual land ownership on Indians, the government also sought to impose particular land uses on Indian men. Indian men were expected to become independent, self-sufficient farmers, despite the fact that most American farmers had already abandoned this model of farming as outdated. Moreover,

264. OTIS, supra note 219, at 96 (quoting 1888 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 50th Cong., 2d Sess. 70).
265. 1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. DOC. No. 1, pt. 5, 50th Cong., 1st Sess. 12.
266. See OTIS, supra note 219, at 87.
267. See 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 56th Cong., 2d Sess. 677. By comparison, in 1887, the government reported that 237,265 acres were cultivated during the year by Indians (while white intruders occupied 256,990 acres of Indian land); that 4927 Indians were living upon and cultivating allotted lands; and that 23,047 Indian families were engaged in agriculture. See 1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. DOC. No. 1, pt. 5, 50th Cong., 1st Sess. 460-61.
270. See id. at 234 (noting that "by 1880 most American farmers had already abandoned the parochial Jeffersonian model of independent self-sufficiency toward becoming petty capitalists producing for national and international markets").
the government was determined to make Indian men crop farmers, even on land that reservation agents indicated was unsuitable for raising crops and was, in some cases, better suited to livestock raising.271 Although government officials were aware of Indian women's traditional role in agriculture, they believed that this role was evidence of Indian men's idleness and Indian women's degraded status as "squaw drudges"—the downtrodden and overburdened victims of the men of their tribes.272 For example, in his 1888 report, the Commissioner wrote that the Indian male must be taught "how to work;" the report also provided the government's view of a typical Indian man's attitude toward his wife and agricultural work:

"His squaw was his slave. With no more affection than a coyote feels for its mate, he brought her to his wigwam that she might gratify the basest of his passions and minister to his wants. It was Starlight or Cooing Dove that brought the wood for his fire and the water for his drink, that plowed the field and sowed the maize."273

271. See id. at 234-37, 242-43; see also 1889 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 51st Cong., 1st Sess. 116 (report of Henry George, Colorado River Agency, July 30,1889) (reporting that the dryness of reservation land made profitable farming "out of the question" without irrigation). The Commissioner admitted in his 1890 report that "great portions of some of the reservations (actually much the greater part of several of the largest reserves), are ... totally unfit for agricultural purposes." 1890 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 51st Cong., 2d Sess. at xcv. The supposed solution to this problem was to "scatter the Indians . . . on the fertile spots of their reservations." Id.

272. For an analysis of the depiction of Indian women as "squaw drudges" and Indian men as lazy and idle, see generally Smits, supra note 63. A number of scholars have explored white images and misperceptions of Indian women. See, e.g., Rayna Green, The Pocahantas Perplex: The Image of Indian Women in American Culture, 16 MASS. REV. 698 (1975) (discussing the image of Pocahantas and other Indian women in American culture); Glenda Riley, Some European (Mis)Perceptions of American Indian Women, N.M. HIST. REV., July 1984, at 237 (1984) (discussing the writings of eighteenth- and nineteenth-century Europeans about Indian women); Sherry L. Smith, Beyond Princess and Squaw: Army Officers' Perceptions of Indian Women, in THE WOMEN'S WEST 63 (Susan Armitage & Elizabeth Jameson eds., 1987) (discussing Army officers' observations about and relationships with Indian women).

273. 1888 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 50th Cong., 2d Sess. at lxxxix (quoting an unnamed writer); see also 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 56th Cong., 2d Sess. 47 (noting that among the original inhabitants of the United States, agriculture was "neglected, or pursued only by the weaker sex"). This view of Indian gender roles was shared by earlier government officials. For example, Thomas Jefferson wrote in the 1780s in a book on the native inhabitants of Virginia that Indian women were subjected to drudgery, and that this type of treatment was a characteristic of all barbarous peoples. See Smits, supra note 63, at 290-91 (citing THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (William Peden ed., Univ. of N.C. Press 1955) (1787)). Even in the twentieth century, officials have regarded changes in Indian gender roles as a positive result of
This alleged attitude on the part of Indian men was to be replaced with an understanding of the proper division of labor between men and women. Indian men were induced to become farmers, regardless of whether they saw this as "women's work."  

Government officials had to have known that providing comprehensive, widespread training in agriculture to adult male Indians would better enable them to succeed in their new role as farmers. Rather than establishing a comprehensive plan for agricultural education, however, the government took a more piecemeal approach. Appropriations were made from time to time for whites to be employed on reservations as "farmers in residence" to superintend and direct Indian farming. Whites who lived on or near reservations were also expected to serve as examples of successful farmers whom Indian men could emulate, although it is difficult to imagine that these white farmers, at least some of whom presumably coveted Indian land, would have been enthusiastic about providing free farming advice to Indians.

The appropriations for hiring farmers in residence were never adequate to provide widespread or effective agricultural training. Moreover, because of the political appointment system that was used to select the farmers, some were appointed on the basis of their political connections despite their possible lack of farming ability. Indian farming was also hampered by the government's failure to

government policy. For example, the Commissioner commented in his 1920 report as follows: "The early explorers of this country found the Indians cultivating the soil, although the women did most of the work.... As the Indians have advanced under the tutelage of the Government, the men have gradually assumed this work, while the women have confined themselves largely to household duties."  

274. See, e.g., Patricia Albers, Sioux Women in Transition: A Study of Their Changing Status in Domestic and Capitalistic Sectors of Production, in The Hidden Half: Studies of Plains Indian Women 175, 182-83 (Patricia Albers & Beatrice Medicine eds., 1983); see also OTIS, supra note 219, at 53-54 (noting that some Indian men viewed growing crops as women's work); Carolyn Garrett Pool, Reservation Policy and the Economic Position of Wichita Women, 8 GREAT PLAINS Q. 158, 160 (1988) (discussing a reservation agent's 1868 report that Wichita men refused to farm because women were the traditional Wichita cultivators).

275. See OTIS, supra note 219, at 77-78. White farmers and stockmen were already employed on some reservations. See id. at 78; see also CARLSON, supra note 221, at 81 (noting the employment of white agency farmers and their varying effectiveness).

276. See CARLSON, supra note 221, at 82.

277. See OTIS, supra note 219, at 78. The Indian Service listed 241 employees as farmers in 1887, 272 in 1897, and 320 in 1900. See id. at 78-79. The 320 farmers employed in 1900 were expected to assist 185,790 Indians. See id. at 79.

278. See id. at 79; see also CARLSON, supra note 221, at 134-35 (noting the general failure of the farmers).
provide adequate amounts of seeds, farming implements, and other equipment needed for farming. Moreover, the Indians’ inability to borrow from white lenders left them unable to obtain their own capital to purchase needed supplies. In short, the assistance that the government provided to Indians was woefully inadequate in light of the goal of turning them into independent, self-sufficient farmers. The limited assistance that did exist was provided to Indian men, rather than to the women who traditionally had played the role of farmers in many tribes and who thus might have been in the best position to benefit from such assistance.

B. The Allotment Program and Indian Women

Under the rule upon which a family is constructed among civilized nations . . . . [t]he father is the head of the family. When a man marries, his wife separates herself from her family and kindred and takes up her abode with her husband, assumes his name, and becomes subordinate, in a sense, to him.

For Indian women, the Dawes Act meant that control of land—the most valuable asset of their tribe and the primary resource for earning a livelihood—was to be concentrated in the hands of men. Although female minors and single women were entitled to allotments under the Dawes Act, married women were not entitled to their own allotments. Their husbands alone were given allotments as presumed “heads of families” and in this capacity received the largest allotments available under the Act. Thus, married women’s

279. See Otis, supra note 219, at 101-02. For example, the appropriations act passed in 1888, a year in which 3568 allotments were made, provided for the allocation of $30,000 for purchasing seeds and tools, which amounted to less than $10 for the needs of each allottee. See Act of June 29, 1888, ch. 503, 25 Stat. 217, 234; Otis, supra note 219, at 101.

280. See Ragsdale, supra note 21, at 420 (discussing the economic disadvantages suffered by Indian farmers, including problems in obtaining credit and working capital).

281. 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 52d Cong., 2d Sess. 34.

282. See Dawes Act of 1887, ch. 119, § 1, 24 Stat. 388, 388 (codified as amended at 25 U.S.C. § 331 (1994)); supra note 221 and accompanying text (describing eligibility for allotments under the Dawes Act); see also 1889 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 51st Cong., 1st Sess. 17 (noting that married women were not entitled to allotments). Apparently, an exception was made for Indian women who married white men. According to the Commissioner’s 1892 report, allotment agents were instructed that Indian women married to white men were to be regarded as heads of families and that these women and their children were to have the full benefits of the Dawes Act. See 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 52d Cong., 2d Sess. 37.

283. See Albers, supra note 274, at 182-84 (describing the preferential treatment given
relationship with and access to the land were henceforth to be indirect, with women made dependent on their husbands’ labor on the land for their survival and that of their children.

The fact that married women were not given their own allotments is not surprising, given the transformation of the structure of the Indian family that was intended to accompany the allotment program. The extended family structure, with its elaborate kinship networks, and the communal family life enjoyed by the members of most tribes were to be replaced by nuclear families, each consisting of a man, his wife, and their minor children. The man, as head of the family, was expected to support the family economically, own the bulk of the family property, and make major economic decisions for the family.

In 1892, the Commissioner reported that in many Indian tribes, the wife was recognized as the head of the family and inheritance was through the female line, while “among civilized nations” families were headed by men, inheritance passed through the male line, and women assumed their husbands’ names and became subordinate to them. Former Supreme Court Justice William Strong, who opposed allotments for married women, expressed similar sentiments in an 1885 speech: “I want the Indians brought together in families. There can never be any civilization without families. I would have the head of the family have the land, and have it descend to his wife and children.” The government also sought to stamp out polygamy, encourage legal marriages between Indians, and curb the rate of divorce among Indians, whose marriages were seen as deplorably “loose.”

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284. See Lacey, supra note 63, at 331.
285. See id. at 342.
286. See id. at 331.
287. See id. at 334; see also id. at 338 (discussing land ownership as a paramount family value).
288. 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 34.
289. William Strong, Remarks on Indian Reform, excerpt reprinted in AMERICANIZING THE AMERICAN INDIANS, supra note 228, at 38, 40.
290. See Albers, supra note 274, at 191 (reviewing efforts to curb the high rate of divorce among the Sioux); Bethany Ruth Berger, After Pocahontas: Indian Women and the Law 1830-1934, 21 AM. INDIAN L. REV. 1, 11, 34-39 (1997) (discussing state regulation of marriage and divorce, Indian divorce, and polygamy); Lacey, supra note 63, at 364-66 (discussing attempts to regulate Indian marriages, divorces, and adultery, including the outlawing of polygamy); Pool, supra note 274, at 166 (discussing efforts to change Wichita marriage practices). Indians were prosecuted for adultery and polygamy, and sometimes obtained divorces, in Courts of Indian Offenses which operated on the
Government officials eventually acknowledged that the Dawes Act's failure to give married women their own allotments was a mistake, although their concern was based on problems that arose when divorces occurred, rather than on the general unfairness of the Act to married women. In his 1889 annual report, the Commissioner described Indian demands for allotments to all individuals, including married women, as "just and equitable." He explained:

The looseness of the marriage relation among many of the tribes often renders it difficult to determine the exact status of the women, and there is danger that many who are living as wives at the time allotments are made will be discarded and thus be landless, while their husbands, having the maximum quantity of land, will take as wives other women who have land.

The Commissioner reasoned that because the reservation was the common property of the tribe, each member of the tribe should receive an equal share of the land when it was divided.

In response to these concerns, Congress amended the Dawes Act in 1891 to provide for an equalized distribution of land among all tribal members on reservations being allotted. By this time, however, substantial amounts of tribal land had already been

reservations. See, e.g., 1890 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO.1, pt. 5, 51st Cong., 2d Sess. 232-33 (report of Webster L. Stabler, Yakima Agency, Sept. 18, 1890) (listing the cases heard during 1890). Such cases accounted for a significant part of the caseload in many reservation courts. For example, of the 31 cases reported in 1890 on the Yakima Reservation, eight were adultery prosecutions, one was a polygamy prosecution, one involved "trouble" between a man and his wife, and four were divorce cases. See id. at 232-33. A divorce was not granted in any of the divorce cases. See id. In one divorce case, Tappenish Slose v. Mrs. Slose, Tappenish Slose was ordered "to go back to his wife, be good to her, and act like a man." Id. at 233. Mrs. Slose was prosecuted earlier in the year for adultery with William Cree, who was put in jail; he was later involved in a divorce case with his own wife. See id. at 232; see also id. at 32 (report of Jno. S. Murphy, Fort Berthold Agency, Aug. 31, 1890) (reporting that "[d]ivorce has been of frequent occurrence .... The practice of men abandoning their wives at pleasure has long obtained," and that in a "case of dissatisfied marital condition on the part of the wife," the wife was directed to return to her husband).

291. See OTIS, supra note 219, at 106-07.
293. Id.
294. See id.
Although the 1891 amendment allowed married women to receive their own allotments, this allowance was no guarantee that these women would in fact be treated equally. For example, when the Round Valley Reservation was allotted and the number of allottees exceeded the number of available allotments, married women were given allotments that were half the size of the allotments given to other allottees.

Moreover, it became clear that even if married women did receive their own allotments, the government assumed that women were not competent to make use of the allotments themselves. The 1891 amendment allowed for the leasing, at the discretion of the Secretary of the Interior, of allotments of Indians who "by reason of age or other disability" could not utilize their land. When the Commissioner issued leasing rules, the term "other disability" was interpreted to include all unmarried women, married women whose husbands or sons were unable to farm, and widows who lacked able-bodied sons. Thus, women were considered inherently "disabled" by their sex, unless they had husbands or sons to do the farming work that women were presumed incapable of performing themselves. Some agents even identified the fact that the leasing program "took care of ... women" as one of the benefits of the program. Moreover, if lands allotted to married women were leased, reservation agents could credit the lease payments to the women's husbands. Thus, married Indian women could be deprived of both access to their land and access to the income from it.

Some observers criticized the leasing program because it could lead to Indian dispossession by whites. Indeed, the leasing...
program proved very popular with white settlers, who recognized leasing as a new method for gaining access to and exploiting Indian lands. Given the fact that Indian women’s land was automatically more eligible for inclusion in the leasing program than Indian men’s land, women’s land may well have been especially vulnerable to the adverse effects of the leasing program.

In addition to leasing, the government had to address a number of other issues involving Indian women and their property rights under the allotment program. For example, the government was concerned about so-called “squaw men”—white men who married Indian women. These men were suspected of marrying Indian women solely to gain access to their property and were generally seen as having a corrupting influence on the Indians. Government officials apparently had difficulty imagining any reason why a white man would marry an Indian woman, aside from the access marriage could afford to her property. In keeping with these concerns, an 1888 federal statute provided that no white man who married an Indian woman could, by virtue of the marriage, acquire “any right to any great disadvantage and the enriching of designing white men.” OTIS, supra note 219, at 119 (quoting Proceedings of the Board of Indian Commissioners at the Twelfth Lake Mohonk Conference (1894), reprinted in 1895 BOARD OF INDIAN COMMISSIONERS ANNUAL REP., reprinted in H.R. EXEC. DOC. No. 5, pt. 5, 53d Cong., 3d Sess., app. at 1088, 1170-71).

303. See id. at 122. The program also reportedly was lucrative for at least some agents, who received bonuses for recommending the leasing of certain allotments at low rents. See id. at 123. Some reservation agents commented on white pressure for leasing in their annual reports. See, e.g., 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 52d Cong., 2d Sess. 186 (report of Robert H. Ashley, Omaha and Winnebago Agency, Aug. 17, 1892) (reporting that the pressure of would-be lessees on Indians who held “the most desirable land” was “very great”).

304. See, e.g., 1890 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 51st Cong., 2d Sess. 219 (report of Hal J. Cole, Colville Agency, Aug. 11, 1890) (reporting that squaw men are “of the lower class,” and stating that “[n]ine out of every ten are addicted to whisky drinking or else they have some other pernicious habit and their presence on the reservation does the Indians harm instead of good”); id. at 233-34 (report of Webster L. Stabler, Yakima Agency, Sept. 18, 1890) (reporting that “[t]he squaw-men . . . are a constant menace to the welfare of the Indians, with a few honorable exceptions,” that a “mulatto” squaw man was encouraging Indians to leave the reservation to pick hops, and that another squaw man had set up a gambling operation); 1889 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 51st Cong., 1st Sess. 295 (report of Thomas Priestley, Yakima Agency, Aug. 16, 1889) (reporting that “the white men who marry Indian women for purposes of getting a home on an Indian reservation are not of the better class”). For a discussion of varying attitudes toward Indian-white intermarriage in general at the time of the allotment program, see David D. Smits, “Squaw Men,” “Half-Breeds,” and Amalgamators: Late Nineteenth-Century Anglo-American Attitudes Toward Indian-White Race-Mixing, AM. INDIAN CULTURE & RES. J., No. 3, 1991, at 29, 29-57.
tribal property, privilege, or interest whatever to which any member of such tribe is entitled." The statute further provided that an Indian woman who married a U.S. citizen (who would most commonly be a white man) became a citizen by virtue of such marriage, but the marriage would not affect her rights in tribal property. A later amendment to the Dawes Act provided that the children of a marriage between a white man and an Indian woman that was recognized by her tribe would have the same rights and privileges to the property of the tribe as any other member.

In sum, the allotment program initially concentrated allotted tribal land in the hands of Indian men by giving heads of households, who were presumed to be men, the largest allotments and by making married women ineligible to own allotments. Although married women eventually were entitled to receive allotments, they were not always treated equally, and the actual control and use of the land were expected to be in men's hands. If married Indian women were widowed or separated from their husbands, they were in danger of losing both possession of their land, potentially at below-market rents, and the income derived from their land through the leasing program. Thus, although the property rights of Indians in general suffered from the dispossession occasioned by Johnson and the allotment program, the property rights and ties to the land of Indian women may well have suffered most severely.

C. The Field Matron Program

Everywhere this field matron work modifies outward forms and touches the mainsprings of life and character, and slowly develops a finer womanhood, childhood, and manhood. It is a subtle force which enlightens, strengthens,
removes prejudice, and breaks down barriers. 308

In order to accomplish their goal of transforming Indian women into model farm wives, government officials thought it best to rely on other women, who were hired to serve on particular reservations as so-called "field matrons;" women were considered natural civilizers and thus the most logical candidates to foster this transformation. 309 Indian women were to undergo what might be termed "domestication." First, they were to give up their supposedly wild and savage lifestyle for a tame and civilized one. Second, their activities, and in particular their labor, were to be confined to the domestic sphere, so that only Indian men would be active in work outside the home, in the tribal economy, and in tribal politics. 310

In describing the field matron program in his 1893 annual report, Commissioner Thomas J. Morgan noted that treaties had frequently included provisions for farmers, blacksmiths, carpenters, and other

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310. The intended domestication of women of color by white policymakers is a phenomenon of more than just historical interest; it has also been identified as a key component of twentieth-century development programs. See generally BARBARA ROGERS, THE DOMESTICATION OF WOMEN: DISCRIMINATION IN DEVELOPING SOCIETIES 35-45 (1980) (discussing discrimination against and domestication of Third World women by development programs that treat women differently from men because of Western men's model of what women should be and do).
craftsmen to instruct Indian men in the lines of work that they were expected to pursue, in recognition of the fact that Indian men could not be expected to assume wholly new tasks "without continued and careful instruction."311 Treaties generally had not, however, included similar provisions for the instruction of Indian women in the domestic work that they were expected to perform.312 Commissioner Morgan believed that Indian women might be in even greater need of instruction than men, because "[e]ven without a teacher the Indian man could learn much of farming, for instance, by watching his white neighbor; but the Indian woman had little chance to observe the methods of the housekeeper near her."313 This lack of instruction allegedly resulted in the Indians taking into their new reservation homes "the habits of out-of-door life—irregular meals, rarely washed cooking utensils and clothes, an assortment of dogs, a general distribution among corners and on the floors of bedding and personal belongings, and a readiness to consider the floor a not inconvenient substitute for bedsteads, tables, and chairs."314 The resulting "[d]irt, disease, and degradation" were deemed "the natural consequences" of Indian women's inadequate domestic skills.315 Although Commissioner Morgan believed that the Indian woman intended to act in her children's best interests, she possessed, he lamented, "the conservatism and the subservience to custom of her sex," and was "bound and thwarted by ignorance, poverty, and long-established tribal custom."316 The field matrons were expected to give Indian women the outside help they needed to overcome the obstacles to becoming model farm wives. By influencing Indian women "in their home life and duties," the field matrons would do for Indian women

311. 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 54.
312. See id. Commissioner Morgan claimed that only two treaties made provision for instruction in domestic tasks—the 1868 Sioux treaty, which supposedly gave $500 annually for a matron, and the "1865 Chippewa treaty," which provided $1000 annually to pay for instructing Indian girls in "domestic economy." "Id. at 56 (quoting Treaty with the Chippewa of the Mississippi and the Pillager and Lake Winnibigoshish Bands, Mar. 11, 1863, art. XIII, 12 Stat. 1249, 1251). Commissioner Morgan seems to have been referring to the treaty between the United States of America and different tribes of Sioux Indians, Apr. 29, 1868, U.S.-Tribes of Sioux, 15 Stat. 635. However, this treaty does not specifically refer to a matron. See id. at 635-47.
313. Id. at 54.
314. Id. at 55. In the 1890s, when larger numbers of Indian families began to inhabit houses on their allotments, officials began to see the need for proper housekeeping as urgent. See Herring, supra note 309, at 42.
316. Id.
“in their sphere what farmers and mechanics are supposed to do for Indian men in their sphere.”\textsuperscript{317} In the words of one reservation agent, the field matrons were to act as “guardian angels” to the “daughters of the wilderness,” and to reveal to them “the mysteries of a new life.”\textsuperscript{318}

According to the instructions issued to Indian agents, field matrons were to counsel and help Indian women as to the following:

1. Care of a house . . .
2. Cleanliness and hygienic conditions . . .
3. Preparation and serving of food and regularity in meals . . .
4. Sewing . . .
5. Laundry work . . .
6. Adorning the home, both inside and out, with pictures, curtains, home-made rugs, [and] flowers . . .
7. Keeping and care of domestic animals . . . care and use of milk, making of butter, cheese and curds and keeping of bees . . .
8. Care of the sick . . .
9. Care of little children, and introducing among them the games and sports of white children . . .
10. Proper observance of the [Christian] Sabbath; organization of societies for promoting literary, religious, moral, and social improvement . . .\textsuperscript{319}

The list of areas of instruction was not intended to be exclusive, however, in the belief that the field matrons’ “tact, skill, and interest [would] suggest manifold ways of instructing [Indian women] in civilized home life, stimulating their intelligence, rousing ambition, . . .

\textsuperscript{317} 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 101.


\textsuperscript{319} 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 101. In addition to the field matrons, so-called “female industrial teachers” were appointed on some reservations to perform similar duties. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 354 (report of W.N. Hailmann, Superintendent of Indian Schools, Sept. 26, 1896) (noting that the duties of the female industrial teachers “are practically the same as those of the field matrons”); 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 18 (reporting that the teachers’ duties are similar to those of the field matrons).
and cultivating refinement." The field matrons' efforts could encompass "anything which women of good judgment, quick sympathies, fertility of resource, large practical experience, abundant energy and sound health can find to do among an ignorant, superstitious, poor, and confiding people." The field matrons were to visit Indian women in their homes and to set aside certain times during which Indian women could come to the field matron's home. To ensure that Indian women performed only the tasks deemed appropriate for their sex, the matrons were "to give to the male members of the family kindly admonitions as to the 'chores' and heavier kinds of work about the house which in civilized communities is generally done by men."

Given the significance attached to the field matrons' work, the Commissioner considered it important that the right women be selected to fill the positions. The field matrons were to be "women of judgment, character, industry, [and] sound health." Because they were expected to "devote their entire time and strength to the work," they had to be "free from family and other cares." Moreover, they needed to be women of fortitude, "ready to subject themselves to the privations which must be borne, if any tangible results are to be secured." Presumably, the field matrons also had to be resourceful because their salary was not adequate to provide both for their own support and for food, medicine, and other items for Indians who were in need. The matrons were expected to be able to meet some of

321. 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 56.
322. See 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 101. The field matrons were expected to work at least eight hours per day, five days a week, plus a half day on Saturday. See id.
323. Id.
324. Id. at 100; see also Herring, supra note 309, at 43 (describing the Civil Service requirements for field matrons, including having an excellent character, robust health, a good education, the ability to speak and write English correctly, a good "executive capacity," and familiarity with domestic and household duties).
325. 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 100; see also Herring, supra note 309, at 46 (noting that many matrons were single and that family obligations apparently eliminated some women from consideration for matron positions). Preference was given, however, to the wives of school superintendents who were already resident on reservations, and assistant field matrons tended to be married women (often missionaries' wives). See Herring, supra note 309, at 43, 46.
326. 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 100.
327. See 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC.
these needs through donations from charities interested in assisting in "this practical method of elevating the condition of Indian women." At least initially, the ideal field matron was also white, although a small number of Indian women were eventually deemed to have sufficient understanding of "white women's ways" to serve as field matrons or assistant field matrons.

Congress made the first appropriation for field matrons, in the amount of $2500, in 1891. This amount allowed for the hiring of three to four matrons for one year. The appropriation was increased in 1892 to $5000, an amount that the Commissioner complained was still "entirely inadequate if the work is to be prosecuted on any large scale." The $5000 appropriation could support only seven field matrons. The Commissioner believed that the field matrons could be most effective among the tribes whose land had been, or was about to be, allotted. In this setting, the field

No. 1, pt. 5, 53d Cong., 2d Sess. 57. In 1893, for example, a field matron's salary was $60 per month. See id.; see also Herring, supra note 309, at 43 (noting that generally the government was willing to pay matrons $500 to $720 per year).


329. See Herring, supra note 309, at 47-48 (stating that few Indians were ever hired as field matrons). See generally Lisa E. Emmerich, "Right in the Midst of My Own People": Native American Women and the Field Matron Program, 15 AM. INDIAN Q. 201 (1991) (describing Native American women in the field matron program). The field matron corps was closed to Indian women until 1895. See id. at 201. From 1895 to 1927, 34 mixed blood and full blood Indian women served as field matrons, constituting roughly 13% of the total corps between those years. See id. at 203. Although field matrons continued their work until the 1930s, the involvement of Indian women in the program declined rapidly after 1905. See id. at 201. During their period of involvement in the program, however, Indian field matrons earned the praise of their white colleagues. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900) (reporting that Mary Wilkinson, "one of our tribe," was performing her duties as field matron with a "spirit of cheerfulness, willingness, and faithfulness")

330. See 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 56. The Indian Appropriations Act of March 3, 1891, included the following provision: "To enable the Commissioner of Indian Affairs to employ suitable persons as matrons to teach Indian girls in housekeeping and other household duties at a rate not exceeding $60 per month, $2500." Indian Appropriations Act, ch. 543, 26 Stat. 989, 1009 (1891).

331. See Herring, supra note 309, at 43.

332. 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 52d Cong., 2d Sess. 100.

333. See 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 56.

matrons could "come in at the transition period and save from failure and hopeless discouragement the Indian woman who begins to see that there is a better way but does not know how to reach for it." During the first three years, field matrons were assigned to the Yakamas, Cheyennes, Arapahoes, Mission Indians, Poncas, Mexican Kickapoos, Sioux, Navajoes, and Moquis. After several years of funding at the $5000 level, the Commissioner asked that the appropriation be increased to $19,680, but Congress refused the request.

The field matrons were required to provide annual reports of their work, which were forwarded by the reservation agents to the Commissioner. Some of these reports were published in the Commissioner's annual reports and provide interesting insights into the field matrons' view of their work, the relationships they believed they developed with Indian women, and their opinion (or at least the

337. See 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 3d Sess. 19. Other government officials shared the Commissioner's view that funding for the field matrons should be increased. For example, in his 1895 report, the Superintendent of Indian Schools commented: [W]hen it is remembered that among the Indians, the wife and mother gives shape and direction to all that concerns the home and its attitude toward the school and civilization, the small provision made by Congress for field matrons who may teach and assist the Indian woman in better ways of living is quite inexplicable.
1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 1st Sess. 342 (report of W.N. Hailmann, Superintendent of Indian Schools, Oct. 1, 1895). In his 1896 report, the Commissioner noted that the appropriation for field matrons had been increased to $15,000. See 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 2d Sess. 24. Apparently, the Commissioner was able to get around some of the fiscal limitations on the appointment of field matrons by appointing female industrial teachers, who could be compensated from different sources. See, e.g., 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 1st Sess. 18 (noting the appointment of female industrial teachers for the Sioux, who could be paid from the Sioux educational funds). For a list of the number of field matrons serving annually in the years 1895-1927, see Emmerich, supra note 329, app. at 212. The largest number of matrons (92) served in 1912. See id.
338. See 1892 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 52d Cong., 2d Sess. 102. The discussion that follows focuses largely on the field matrons' reports that were published, along with reservation agents' reports, as part of the Commissioner of Indian Affairs' annual reports from 1893-1900. In addition, the discussion draws on an interesting autobiographical account of the experiences of two women who served as field matrons in California in the early twentieth century. See MARY ELICOTT ARNOLD & MABEL REED, IN THE LAND OF THE GRASSHOPPER SONG: TWO WOMEN IN THE KLAMATH RIVER INDIAN COUNTRY IN 1908-09 (Bison Books 1980) (1957).
one they were willing to convey to officials in Washington) as to the success or failure of their efforts to transform Indian women.

The published reports indicate that field matrons approached their work with a strong sense of determination and purpose. They were confident that what they were doing was “right for ... the Indian” and were eager to play their role in what one field matron termed “uplifting humanity.” One likened the task to that of a missionary, who must rely on her powers of persuasion to lead potential converts to the right way of thinking and acting.

Despite the importance of the information they were expected to communicate to Indian women, field matrons were not required to be able to speak Indian languages. Several field matrons commented on the language barrier in their annual reports, and a few tried to overcome the barrier by learning the resident tribe’s language.

339. Herring, supra note 309, at 48; see also Lisa E. Emmerich, “Civilization” and Transculturation: The Field Matron Program and Cross-Cultural Contact, 15 AM. INDIAN CULTURE & RES. J. 33, 44-45 (noting that even field matrons whose attitudes toward Indians were altered by their experiences as field matrons never questioned the appropriateness of their role).


341. See 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 2d Sess. 301 (report of Kate Morris, field matron, Rosebud Agency, Aug. 1, 1893) (“A field matron’s work is in many respects similar to that of a missionary. She can advise and instruct and demonstrate to the Indian women how certain things should be done, but cannot compel or even insist on their doing anything. Persuasion is the only power at her command.”); see also id. at 111 (report of E.H. Plummer, acting agent, Navajo Agency, Aug. 22, 1893) (reporting that the work of both the field matron and the resident missionary “has been that type of missionary work that accomplishes more by deeds than by theories”).

342. See, e.g., id. at 301 (report of Kate Morris, field matron, Rosebud Agency, Aug. 1, 1893) (reporting that she could accomplish more with a female interpreter); see also 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 2d Sess. 243 (report of Mary J. Cramsie, female industrial teacher, Standing Rock Reservation, Aug. 15, 1896) (reporting that “[t]here is plenty of work for the field matron who understands the language”).

343. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) (“We have tried earnestly from our first arrival here to learn the Navajo language, and I hope to continue till I can tell the story of Christ to these people in their own tongue without an interpreter.”). The 1894 report indicated that Mary Whyte was still trying to learn Navajo. See 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated); cf. 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 2d Sess. 243 (report of M.L. McLaughlin, female industrial teacher, Standing Rock Reservation, Aug. 20, 1896) (“[T]he field matron should have a knowledge of the Indian ... language ...”). ARNOLD & REED, supra note 338, at 243 (noting that they spoke “Indian” to a Karok
Some field matrons also believed that careful observation of the tribe's manners and customs was important. Whether they were learning a tribe's language or familiarizing themselves with its customs, these matrons presumably did so not out of intellectual curiosity, but rather because they believed such actions would assist them in carrying out their work.

Like women of other Western nations who labored to uplift their sisters of color in "uncivilized" foreign lands, the field matrons viewed "elevation" of the Indian woman as an important part of the civilization process. For example, Eliza Lambe, who served as a field matron at the Cheyenne and Arapaho Agency, commented in 1894 that she would do all she could "to lift Indian woman to the higher position given her, and the sooner she reaches it the faster will civilization grow." Once Indian women performed the largely indoctrinated tasks deemed appropriate for their gender, Indian men, it was believed, would be encouraged to act in conformity with their proper gender roles. In some instances, field matrons noted that getting Indian women to perform tasks deemed appropriate for their gender required persuading them to undertake tasks that were generally

woman who always spoke in "Indian"). Some matrons included phrases in native languages in their reports. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 364 (report of E.O. Stilwell, field matron, Moqui Reservation, Aug. 1896). A field matron's ignorance of the resident tribe's language could lead to resentment of the field matron. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 344 (report of J. Jensen, Ponca, Pawnee, Oto, and Oakland Agency, Aug. 31, 1900). 344. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 233 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 25, 1896) (reporting that her first few months on the reservation were spent "carefully observing their manners and customs in order that the help we hoped to give might be more intelligently given"); ARNOLD & REED, supra note 338, at 110 (noting that when the two field matrons first came to Karok country their manners "were very bad," because they "talked too much" and "lacked reserve and dignity," but that they had learned "how to behave" according to Karok custom).

345. See, e.g., Burton, supra note 309, at 137, 144 (noting that British women social reformers believed that they could lead women from India "into a position of greater freedom and light" (quoting Josephine Butler, a leading British feminist reformer)).


347. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 174 (report of M.W. Peticolas, female industrial teacher, White Earth Reserve, Aug. 15, 1896) (stating that "when the women learn to utilize and cook properly the products of the farm and garden the men will be greatly encouraged in their efforts at cultivating them").
performed by men in their tribes. Elevation of the Indian woman was particularly important to those field matrons who shared the belief of government officials that Indian women occupied a lowly status within their tribe. For example, Frances S. Calfee, who served as a field matron for the Hualapais, wrote in 1896 that “[t]he Hualapai women occupy an unenviable position, being counted little, if any, better than the dogs, and certainly not so valuable as the horses.”

One major concern of the field matrons was the nature of the Indian home. Field matrons stressed the importance of the civilized home and the central role of the wife within it. They compiled statistics on how many Indians were living in houses as opposed to traditional dwellings. Field matrons generally viewed traditional Indian homes and the nomadic lifestyle of some tribes as impediments to becoming civilized; they lamented the poor condition of Indian homes and the shortage of houses on the reservations, complaining that it was difficult to teach Indian women proper housekeeping without actual houses in which to practice what they learned. Field matrons sought paint and other resources

348. See, e.g., id. at 364 (report of E.O. Stilwell, field matron, Moqui Reservation, Aug. 1896) (reporting that many of the Moqui women “had scarcely ever had a needle in their fingers before, as the men do the sewing”).

349. Id. at 111 (report of Frances S. Calfee, field matron for Hualapais, undated).

350. See Emmerich, supra note 339, at 38.

351. See, e.g., 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 3d Sess. 242 (report of Eliza Lambe, field matron, Cheyenne and Arapaho Agency, Aug. 15, 1894) (reporting that 95 families lived in houses, while 414 lived in traditional dwellings); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 114 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) (reporting that three Navajo families lived in houses, while 103 lived in “tepees, hogans, or other Indian habitations”). The Commissioner also included statistics on “Indian dwelling-houses” in his annual reports. E.g., 1887 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, EXEC. DOC. NO. 1, pt. 5, 50th Cong., 1st Sess. 279.

352. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) (“Instruction in neatness, also in... other lines of woman’s work, has been given to a great many women, but the families are so constantly moving about and the women have so little to do with that not much result can be seen.”); see also Herring, supra note 309, at 48-49 (discussing field matrons’ dismay at Indians’ nomadic habits).

353. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 111 (report of Frances S. Calfee, field matron for Hualapais, undated) (“The places in which these Indians live are the most squalid huts.... It is impossible to teach them to care for what they have not; nor can they learn to cook in a civilized manner when they must cook on the coals of a camp fire.”); id. at 233 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 25, 1896) (reporting that
needed to improve the condition of Indian homes. Some took the need for houses so seriously that they, as well as some Indian women, contributed their own labor to the building of reservation houses. The matrons were enthusiastic about transforming Indian homes in spite of the recognition by at least some matrons that the transition to houses also posed dangers, because past experience had shown that closer quarters often caused an increase in disease. Some Indian women apparently learned enough about white housekeeping methods, despite the lack of resources available to the field matrons, to be hired to do housekeeping for white women.

The condition of the homes was "deplorable" and that "the women can not be taught to continue in housewifery until a better-constructed house is furnished them"); id. at 242 (report of Mary J. Cramsie, female industrial teacher, Standing Rock Reservation, Aug. 15, 1896) (reporting that most of the homes were "very poor" and that the efforts made to keep them orderly were "astonishing"); 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 205 (report of Nellie Lindsay, field matron, Santee Reservation, Aug. 31, 1895) (reporting that it seemed "like an almost hopeless task" to help the Santees improve their way of living "without being furnished anything . . . except what can be found around their barren homes").

354. See, e.g., 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 206 (report of Nellie Lindsay, field matron, Santee Reservation, Aug. 31, 1895) (requesting paint and material for painting to improve the floors and walls of Indian houses).

355. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 364 (report of E.O. Stilwell, field matron, Moqui Reservation, Aug. 1896) (reporting that Moqui houses were "well put up, much of the work being done by the women").

356. See, e.g., 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated) (reporting that five houses had been built, for which she furnished doors and windows, and that she insisted that fireplaces be built in each house for ventilation).

357. See 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893). Whyte reported:

When the Navajos leave off their roving life and settle in permanent houses will be a critical time for the health of the tribe. Now they have plenty of fresh air in spite of themselves. . . . A good open fireplace in every room of every house they may build in future would tend to prevent that increase of disease which often marks the change from the lodge to the small house.

Id.

358. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 111 (report of Frances S. Calfee, field matron, Hualapais, undated); 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 357 (report of F.S. Calfee, field matron, Hualapais, July 1, 1895). Some Indian women also earned money by serving as field matrons. See supra note 329 and accompanying text. Indian girls were also tapped as a source of domestic labor. See, e.g., Lida W. Quimby, The Field Matron's Work, Address Before Department of Indian Education (July 11, 1900), in 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 468, 469. These practices would seem to have been at
and thus provided white families with a convenient pool of presumably low-paid domestic laborers.

Although one of the designated areas of training for Indian women was care of the sick, some field matrons went beyond simple instruction in nursing to play an active role in this area, at times filling in for agency physicians who were absent from the reservation or who lived a great distance away. Field matrons reported that some Indians supplemented the matrons' efforts with visits from medicine men; however, the matrons hoped that this experience would teach the Indians that the matrons' remedies were

359. See supra note 319 and accompanying text (listing the areas of focus for the field matrons).

360. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900); id. at 348 (report of Sarah E. Murray, field matron, Pawnee Agency, July 2, 1900); id. at 477 (report of Sarah E. Abbott, field matron, East Mesa, Hopi Reservation, Aug. 15, 1900); 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 54th Cong., 2d Sess. 174 (report of M. W. Peticolas, female industrial teacher, White Earth Agency, Aug. 15, 1896); id. at 233 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 25, 1896); 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 54th Cong., 1st Sess. 120 (report of Mary L. Eldridge, field matron, Navajo Reservation, Aug. 15, 1895); 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893); id. at 301 (report of Kate Morris, field matron, Rosebud Agency, Aug. 1, 1893; see also ARNOLD & REED, supra note 338, at 118-21 (discussing their "medical practice"); id. at 236-37 (describing a trip to take medicine to a woman who suffered from rheumatism).

361. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 2d Sess. 301 (report of Kate Morris, field matron, Rosebud Agency, Aug. 1, 1893) (reporting that she spent 18 days attending to the agency physician's duties during his absence).


363. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) (reporting that medicine men were sometimes called in after the field matron had "successfully carried a severe case through to convalescence" and that "[w]e have not openly antagonized the medicine man, though we always drop a case if he is called to it"); see also ARNOLD & REED, supra note 338, at 119 (noting that "Indian doctors" were used more frequently than white doctors because the former required payment only if the patient were cured); Emmerich, supra note 339, at 39-40 (discussing the field matrons' roles in health care and the varying attitudes toward traditional healers); Emmerich, supra note 329, at 206-07 (describing Indian field matrons' attitudes toward native healers).
more effective. The field matrons’ concern for improving Indian health also led them to encourage Indian mothers to give more cow’s milk to their children. Although the matrons may have intended this measure to improve the children’s health, it could have had the opposite effect because of the difficulty that many individuals of non-European ancestry have in digesting dairy products. Field matrons also cited health and hygiene concerns as the basis for promoting the wearing of Euro-American clothing by Indian women.

In addition to the treatment of the ill, some field matrons added teaching at reservation schools to their regular duties. Through

364. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) ("Experience will teach them that our simple remedies do more good than songs, rattles, and feathers . . ."); see also 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated) (reporting that the "[t]he more progressive Indians are fast losing faith in their medicine men").

365. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 54th Cong., 2d Sess. 243 (report of Mary J. Cramsie, female industrial teacher, Standing Rock Reservation, Aug. 15, 1896). Caring for domestic animals, such as cows, and the use of milk and dairy products were deemed to be suitable areas of instruction for Indian women. See supra note 319 and accompanying text.

366. Lactose intolerance, which makes the digestion of dairy products difficult because of the affected person’s inability to digest the milk ingredient lactose, and which can cause cramps, diarrhea, and nausea, is common among Native Americans. See Holly Weaver Beason, Don’t Confuse Allergy with Food Intolerance, FLA. TODAY, Sept. 18, 1997, at E1 (noting that 90% of Asian Americans are lactose intolerant, and 75% of African-Americans, Native Americans, Jews, and Hispanics in the United States may experience lactose intolerance symptoms); Barry Bogin, The Tall and the Short of It, DISCOVER, Feb. 1, 1998, at 40, 40 (reporting that lactose intolerance affects 70-90% of African-Americans, Native Americans, Asians, and people from the Mediterranean); K. Marie Porterfield, Traditional Diet Can Prevent Health Problems, INDIAN COUNTRY TODAY, June 16-23, 1997, at B7 (discussing lactose intolerance among Native Americans).

367. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 54th Cong., 2d Sess. 364 (report of E.O. Stilwell, field matron, Moqui Reservation, Aug. 1896) (commenting that American dresses are “more healthful”); see also 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900) (reporting that the Indian women were making a greater effort “to dress their families more hygienically”). On the other hand, one agency physician noted that Indian women were more robust than white women and attributed this in part to the fact that Indian women did not wear corsets “to atrophy their abdominal muscles and disarrange the normal anatomical relations of their thoracic, abdominal, and pelvic viscera.” 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. No. 1, pt. 5, 53d Cong., 3d Sess. 291 (report of Z.T. Daniel, agency physician, Pine Ridge Agency, Sept. 3, 1894).

368. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. No. 5, 54th Cong., 2d Sess. 111 (report of Frances S. Calfee, field matron, Hualapai, undated); see also ARNOLD & REED, supra note 338, at 93-94 (noting that Indian women’s basket designing talents helped them in learning to write in school); id. at 94-96
their various activities on the reservations, some field matrons seem to have developed feelings of kinship and friendship with tribal members, which in a few reported instances prompted them to act as advocates for Indians against local whites and other government employees.369

Besides embracing a missionary approach to their work, some field matrons worked closely with and received support from Christian missionaries living on the reservations.370 Some matrons took this alliance of church and state further by engaging in proselytizing themselves, encouraging Indians to observe the Christian Sabbath, and holding Sunday school for adults and children.371 As one explained, it was believed that Indian women who

[noting Indian students' talents in arithmetic]. In her autobiography about her field matron experience in California, Arnold wrote:

[T]he more I tell of the history and traditions of the whites, the more I question whether they are fit subjects on which in [sic] instruct the Indians. The... class was so shocked by what I told them of ancient Rome that I was very much discomforted.... [C]onventional history is really too bloody.... [W]e should have to suppress a large part of it.

Id. at 97.

369. See ARNOLD & REED, supra note 338, at 80-82 (describing how they interceded with the sheriff on behalf of some Karoks); id. at 251-54 (describing how they interceded when county officials refused to pay Karoks for work on a bridge); Emmerich, supra note 339, at 42-44 (discussing the sense of kinship that some matrons developed within reservation communities). Field matrons Mary Ellicott Arnold and Mabel Reed saw themselves as being adopted into Indian families and losing these adoptive family ties when they left. See ARNOLD & REED, supra note 338, at 313.

370. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 233 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 25, 1896) (describing the assistance she had received from the American Missionary Association mission); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893) (reporting on her work with, and support from, Mrs. M.L. Eldredge, the missionary sent by the Woman's Home Missionary Society of the Methodist Church). For an analysis of the role that the government expected Christian missionaries to play on reservations, see Dussias, supra note 20, at 776-83. The Commissioner noted in his 1896 report that he looked to missionary societies for recommendations to fill field matron positions. See 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 24.

371. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900) (reporting on the holding of Sunday school); id. at 348 (report of Sarah E. Murray, field matron, Pawnee Agency, July 2, 1900) (reporting on the holding of Sabbath services); 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 174 (report of M.W. Peticolas, female industrial teacher, White Earth Agency, Aug. 15, 1896) (reporting that she had established a Sunday school); id. at 233 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 25, 1896) (reporting that she had received permission to use the schoolhouse for Sunday school); 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1,
had become Christians "were willing to take up the white woman's way of living." On some reservations, the roles of missionary and field matron were interchanged when a woman who had resided on the reservation as a missionary was subsequently appointed a field matron. In other instances, the wives of reservation missionaries received appointments, thus receiving salaries that were helpful to their husbands' proselytization efforts.

Although the field matrons' efforts were intended to focus primarily on women's domestic pursuits, some matrons promoted farming on the reservations by distributing seeds and lending tools to Indian men. Moreover, field matrons sometimes included in their annual reports advice on what needed to be done to promote Indian farming. Mary E. Whyte, for example, who served as a field matron

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pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated) ("Many talks have been given ... upon the Sabbath as a day of rest and upon fundamental truths."); id. at 241 (report of Eliza Lambe, field matron, Cheyenne and Arapaho Agency, Aug. 15, 1894) (reporting that she distributed "a great many religious papers," which children read to older people, and that she held religious services in the Indian camps on Sunday afternoons); see also ARNOLD & REED, supra note 338, at 88-92 (discussing the establishment of Sunday schools); id. at 89 (describing themselves as "what were once considered the somewhat heathen members of the Episcopal Church of Somerville, New Jersey").


373. For example, prior to becoming a field matron, Mary L. Eldridge served as a missionary on the Navajo Reservation. See 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary L. Eldridge, missionary, Navajo Reservation, Aug. 27, 1894); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Exec. Doc. No. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary L. Eldridge, missionary, Navajo Reservation, Aug. 5, 1893). In 1895, Eldridge was the field matron on the Navajo Reservation. See 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 54th Cong., 1st Sess. 120 (report of Mary L. Eldridge, field matron, Navajo Reservation, Aug. 15, 1895). She noted in her 1895 report that the report covered the work done at the mission by herself and the missionary. See id.; cf. Herring, supra note 309, at 46 (noting that the first field matron on the Kiowa-Comanche Reservation had originally served as a missionary there).

374. See 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. Doc. No. 5, 56th Cong., 2d Sess. 344 (report of J. Jensen, agent for the Ponca, Pawnee, Oto, and Oakland Agency, Aug. 31, 1900) (reporting that the "present field matrons at Ponca and Pawnee are the wives of the missionaries, who draw a salary from their church organization (the Methodist Episcopal), and of course the field matron's salary is quite a help"). Agent Jensen commented further that "[t]hese positions might as well be abolished so far as they are of any benefit except to the incumbent who draws the salary." Id.; see also Herring, supra note 309, at 44, 46 (noting the service of missionaries' wives as assistant field matrons).

on the Navajo Reservation, emphasized in her 1893 report the need for irrigation in order for the Navajos to become successful farmers.\textsuperscript{376} Mary Eldridge noted in her 1895 report that the drought-stricken Navajos were badly in need of seed and tools for farming and had asked to be taught how to "make water run up hill like the white men."\textsuperscript{377}

The field matrons' efforts were intended to complement the allotment program, and their reports generally showed enthusiasm for allotment. Some commented, for example, on the importance of allotment in promoting civilization and discouraging dependency.\textsuperscript{378} As for Indian reactions to allotment, some reported that Indian sentiment toward allotment was favorable,\textsuperscript{379} while others reported opposition.\textsuperscript{380} Elizabeth Test, who served as a field matron on the Mexican Kickapoo Reservation, reported in 1894 that allotment had "troubled" the Mexican Kickapoos, causing them to be in "an unsettled condition" that led to many of their fields being untilled.\textsuperscript{381} In fact, some Kickapoos refused to take allotments.\textsuperscript{382} Test noted that although the Kickapoos appeared stubborn, they acted out of religious conviction: "They believe the Great Spirit will be displeased if they consent to have the land divided, and rather than to cause that they will suffer a great deal."\textsuperscript{383}

\textsuperscript{376} See id.
\textsuperscript{377} 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 120 (report of Mary L. Eldridge, field matron, Navajo Reservation, Aug. 15, 1895); see also Herring, supra note 309, at 49-50 (discussing the variety of tasks performed by field matrons).
\textsuperscript{378} See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron, Navajo Reservation, Aug. 4, 1893). Mary Whyte recommended that Navajo land be irrigated and allotted in ten- or fifteen-acre pieces, noting that "[i]rrigation, allotment of land; and education of all the children will civilize these people." Id. Other women promoted allotment by serving as special agents in charge of making allotments on particular reservations. See, e.g., 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 3d Sess. 118 (Miss Foote, Rincon Reservation, undated); 1889 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 51st Cong., 1st Sess. 15 (Alice C. Fletcher, Nez Perce Reservation, undated).
\textsuperscript{379} See, e.g., 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated) (reporting that the Indians "are getting dissatisfied with ownership in common").
\textsuperscript{380} See, e.g., id. at 257 (report of Elizabeth Test, field matron, Mexican Kickapoo Reservation, Aug. 15, 1894) (describing Kickapoo opposition to allotment).
\textsuperscript{381} Id.
\textsuperscript{382} See id. at 258.
\textsuperscript{383} Id. Elizabeth Test also reported that some of the Kickapoos who had accepted allotments and had begun to improve them had been discouraged by heavy taxes on their personal property and had abandoned the allotments. See id.
Field matrons regularly complained about the inadequacy of resources that the government made available to support their work. Some noted the discrepancy between the resources allocated to Indian men and women. For example, Kate Morris, who served as a field matron at the Rosebud Agency, commented in 1893 that greater results could be obtained if “the Indian women could be furnished with material to accomplish their work in proportion to the material and machinery furnished the Indian men to do what is required of them by the Department.” On some reservations, field matrons scrambled to find the resources necessary to feed the sick and hungry and to prevent starvation. Mary Eldridge, who served on the Navajo Reservation, reported in 1895 that “[t]he constant need of the hungry people—those who were absolutely suffering from hunger—was very hard to encounter day by day, and our resources were taxed to the utmost.” Some matrons relied on support from missionary and other groups to make up for the inadequacy of the resources provided by the government. The lack

384. See, e.g., 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 301 (report of Kate Morris, field matron, Rosebud Agency, Aug. 1, 1893) (“With nothing whatever furnished the field matron with which to work it can not be expected that very great results can be obtained in a very short time.”).

385. Id.; see also 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 111 (report of Frances S. Calfee, field matron, Hualapais, undated) (“While not asking that less shall be done for the men, we do most earnestly and respectfully ask that more be done for the women.”); supra notes 275-80 and accompanying text (describing the limited assistance given to Indian men to promote farming).

386. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900) (reporting that she had decided to use money formerly used for cooking class materials to feed the sick and needy).

387. 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 120 (report of Mary L. Eldridge, field matron, Navajo Reservation, Aug. 15, 1895).

388. See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 317 (report of Anna R. Dawson, field matron, Fort Berthold Reservation, Aug. 14, 1900) (reporting that she had received support from “a New York friend”); 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 2d Sess. 111 (report of Frances S. Calfee, field matron for Hualapais, undated) (reporting that she had received donations from the Massachusetts Indian Association); 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54th Cong., 1st Sess. 205 (report of Nellie Lindsay, field matron, Santee Reservation, Aug. 31, 1895) (reporting that she had received supplies from “benevolent friends and societies in the East”); 1894 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 3d Sess. 103 (report of Mary E. Whyte, field matron, Navajo Reservation, undated) (reporting that she had received donations from the Cambridge (Mass.) Indian Association); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 113 (report of Mary E. Whyte, field matron,
of resources made the field matrons' work seem at times like "an almost hopeless task." The absence of any means of transportation was particularly difficult for field matrons serving reservations on which the Indians were spread widely apart.

Field matrons reported that Indian women were willing to make changes once shown the "proper" way to do things. Indian women on some reservations were even reported to be enthusiastic about adopting "the manners and customs of civilization." Some field matrons reported that the younger women provided the most fertile ground for the field matrons' efforts; on the other hand, Nellie Lindsay, who served as field matron on the Santee Reservation, expressed surprise in her 1895 report that so many of the middle-aged and older women of the tribe also wanted to improve their homes.

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Navajo Reservation, Aug. 4, 1893 (reporting that the Women's Home Missionary Society of the Methodist Church had provided her with a home, medicine, and other supplies and that the Cambridge (Mass.) Indian Association had sent money to purchase tools and implements).

389. 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54TH CONG., 1ST SESS. 205 (REPORT OF NELLIE LINDSAY, FIELD MATRON, SANTEE RESERVATION, AUG. 31, 1895).

390. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54TH CONG., 2D SESS. 174 (REPORT OF M. W. PETICOLAIS, FEMALE INDUSTRIAL TEACHER, WHITE EARTH RESERVE, AUG. 15, 1896) ("The people live at long distances apart, and it is impossible to reach them all on foot."); id. at 233 (REPORT OF ANNA R. DAWSON, FIELD MATRON, FORT BERTHOLD RESERVATION, AUG. 25, 1896) ("During the fall and winter the work was much hampered by the lack of a conveyance.").

391. See, e.g., 1896 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54TH CONG., 2D SESS. 111 (REPORT OF FRANCES S. CALFEE, FIELD MATRON, HUALAPAI, UNDATED) (REPORTING THAT THE HUALAPAI WOMEN "ARE FRIENDLY TO ALL INNOVATIONS WHICH BENEFIT THEM"); id. at 174 (REPORT OF M. W. PETICOLAIS, FEMALE INDUSTRIAL TEACHER, WHITE EARTH RESERVE, AUG. 15, 1896) (REPORTING THAT "[T]HE WOMEN WELCOME ME CORDIALLY AND ARE ANXIOUS TO LEARN"); id. at 242 (REPORT OF MARY J. CRAMSIE, FEMALE INDUSTRIAL TEACHER, STANDING ROCK RESERVATION, AUG. 15, 1896) (REPORTING THAT INDIAN WOMEN "ARE HAPPY TO HAVE SOME ONE SPECIALLY TO INSTRUCT THEM"); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, PT. 5, 53D CONG., 2D SESS. 301 (REPORT OF KATE MORRIS, FIELD MATRON, ROSEBUD AGENCY, AUG. 1, 1893) (REPORTING THAT THE YOUNG WOMEN "SHOW A DISPOSITION TO LEARN HOW TO PERFORM THE VARIOUS DUTIES CONNECTED WITH THE MANAGEMENT OF A HOUSE"); see also HERRING, supra note 309, at 50 (DISCUSSING FIELD MATRONS' OPINIONS OF THE SUCCESS OF THEIR EFFORTS).

392. 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, PT. 5, 53D CONG., 2D SESS. 301 (REPORT OF KATE MORRIS, FIELD MATRON, ROSEBUD AGENCY, AUG. 1, 1893) (REPORTING THAT "SOME OF THEM SHOW A DECIDED AMBITION TO BECOME GOOD HOUSEWIVES").

393. See, e.g., id. (REPORTING THAT THE YOUNG WOMEN "SHOW A DISPOSITION TO LEARN HOW TO PERFORM THE VARIOUS DUTIES CONNECTED WITH THE MANAGEMENT OF A HOUSE" BUT THAT LITTLE COULD BE DONE TO TEACH THE OLDER WOMEN).

394. See 1895 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 54TH CONG., 1ST SESS. 205 (REPORT OF NELLIE LINDSAY, FIELD MATRON, SANTEE RESERVATION, AUG. 31, 1895). LINDSAY ALSO NOTED THAT YOUNGER PEOPLE WHO HAD JUST RETURNED FROM
Some reports by reservation agents, however, indicated that the field matrons and their efforts were not always as well received as the matrons’ own reports may have indicated.\textsuperscript{395} Indian women’s view of the field matrons and their work, and the extent to which Indian women resisted the transformation that the field matrons sought to impose, are difficult to uncover; although some of the field matrons’ reports discuss Indian women’s reactions to the matrons’ work, these reports may not be entirely accurate. The field matrons’ impressions might themselves have been erroneous because they misinterpreted Indian women’s reactions, or the field matrons may have accurately judged Indian women’s reactions but deemed it expedient to give a somewhat different account to the Commissioner to give the appearance that their efforts were succeeding.\textsuperscript{396}

The field matrons’ reports illustrate the central role that their authors sought to play in domesticating Indian women and in bolstering the allotment program and its focus on Indian men as farmers and landowners. The field matrons’ efforts weakened Indian women’s ties to the land and shifted the focus of women’s work from the land to the interior of the home. While some of the matrons may have believed that they were rescuing Indian women from the degradation allegedly imposed by Indian men, the matrons seemingly failed to appreciate the role that they themselves were playing in subjugating Indian women to the ways of Euro-American society. In other words, they did not understand that while it may have been

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\textsuperscript{395} See, e.g., 1900 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. DOC. NO. 5, 56th Cong., 2d Sess. 344 (report of J. Jensen, Ponca, Pawnee, Oto, and Oakland Agency, Aug. 31, 1900) (reporting Indian resentment of field matrons, particularly where the matrons were ignorant of the Indians’ language); 1893 REPORT OF COMMISSIONER OF INDIAN AFFAIRS, H.R. EXEC. DOC. NO. 1, pt. 5, 53d Cong., 2d Sess. 126-27 (report of Francisco Estudillo, Mission and Tule River Consolidated Agency, Aug. 31, 1893) (reporting that the residents of the Ramona Reservation did not want a field matron, because the present field matron “has caused some disturbance by endeavoring to obtain a piece of land which, when granted, deprives the Indians of their chief watering place and their warm springs,” and that the Agua Caliente Indians did not like or want their field matron); see also Herring, supra note 309, at 47-48 (discussing complaints lodged against one field matron for creating tribal divisions). Mary Ellicott Arnold and Mabel Reed, who served as field matrons in California in the early twentieth century, believed that the Karok Indians were likely to be hostile toward field matrons, as agents of the government, and therefore preferred to be regarded as “schoolmarm.” See ARNOLD & REED, supra note 338, at 41.

\textsuperscript{396} Field matrons may also have been aware of the influence of Indian women and culture on the matrons’ own perceptions of themselves and their duties, but felt uncomfortable discussing this influence in their reports. See Emmerich, supra note 339, at 35.
accurate to describe Indian women as the victims of oppression, the oppression arose not from their being women oppressed by the men of their tribe, but rather from being Indians, whose beliefs about the land, property rights, and gender roles had been targeted for destruction by the federal government.\(^{397}\)

Despite the concerted efforts of the field matrons and other government employees, and regardless of the matrons' own estimations of the success or failure of their efforts in "bearing the white woman's burden,"\(^{398}\) Indians did not meekly assimilate and disappear into American society, and Indian women did not wholeheartedly embrace the dependence on men advocated by the allotment and field matron programs. Twentieth-century Indian women, and Indians in general, continue to envision themselves differently from the identity that nineteenth-century government programs sought to impose on them. Moreover, Indians continue to hold views of the land, and to assert claims to it, that are contrary to the federal government's understanding of land ownership and land cessions. Their continuing struggle to define themselves and live according to their own vision is the subject of Part IV.

IV. THE STRUGGLE CONTINUES: THE DANN SISTERS' RESISTANCE TO THE TAKING OF THEIR PROPERTY RIGHTS AND TO DOMESTICATION

"It's the only way I can protect myself. I gotta protect my

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397. Contemporary native women have made a similar point when discussing the differences between themselves and feminists. One Native Canadian woman has explained this point of view as follows:

I do not call myself a feminist... I believe that while white feminists and Indigenous women have a lot in common, they are in separate movements. Feminism defines sexual oppression as the Big Ugly. The Indigenous women's movement sees colonization and racial oppression as the Big Uglies... I want to be able to understand why feminists continue to believe in the universality of male dominance, the universality of sisterhood, and why they strive so hard to convert Aboriginal women.


If these women [feminists] purport to understand oppression because they are women oppressed by men, how then can they turn around and diminish the significance and the depth of my oppression as an Aboriginal woman oppressed by colonialism?... I think that tools exist for feminists to reconceptualize oppression, to understand the oppressions faced by other people and how they as feminists participate in the oppression of other peoples.

Id. at 160.

398. Burton, supra note 309, at 137 (referring to the belief of white women that they have a duty to uplift women of color from their supposedly oppressed condition).
livelihood. They talk about the Constitution. There’s no Constitution as far as I can see. It doesn’t protect me, it doesn’t protect people of my color.”

Carrie and Mary Dann have been ranchers in northeastern Nevada since the 1940s, raising livestock on land on which their tribe, the Western Shoshones, have resided and made a living from time immemorial. Since the 1970s, the Danns have resisted federal government efforts to limit their grazing of livestock, and to treat them as trespassers, on land that the government claims as public domain land.

The treatment that the Dann sisters have received at the hands of federal government officials and the federal court system illustrates the United States’s continuing denial of Indian property rights in aboriginal tribal land, including Indian women’s property rights in such land. The Danns’ struggle also demonstrates the persistence of Indian women’s claims to ancestral lands and Indians’ continued questioning of, and struggle against, the property rights regime imposed by the Supreme Court’s decision in Johnson v. McIntosh and by the allotment program. By asserting the right to graze their livestock on land that the government claims no longer belongs to the Western Shoshones, the Danns have shown their refusal to accept the legitimacy of government claims to Indian land. By denying that land can ever be owned by individuals, the Danns have rejected a basic premise underlying both Johnson and the allotment program. Moreover, by making a living as ranchers, the Danns have demonstrated their refusal to be relegated to the economic and societal roles that the government deemed proper for Indian women, roles which the government sought to inculcate through the field matron program in the nineteenth and early twentieth centuries. Finally, by taking their case to the international community, the Danns have shown their refusal to accept the Johnson Court’s limitation on Indians’ right to deal directly with other nations. In short, over 100 years after the enactment of the Dawes Act and the establishment of programs

399. SOLNIT, supra note 11, at 195 (quoting Carrie Dann).
400. See supra Part II.A.1 (discussing Johnson).
401. See supra Parts III.A-B (discussing the allotment program).
402. See supra Part III.C (discussing the field matron program).
designed to domesticate Indian women, destroy tribal culture, and assimilate Indians into Euro-American society, the Danns continue to struggle for legal recognition of their right to lead their lives and to enjoy their people's ancestral land in keeping with their own vision.

Part IV.A discusses a damages claim brought before the Indian Claims Commission by a small group of Shoshones for the alleged taking of tribal lands. Part IV.B examines the trespass suit against the Danns and the purported effect of the decision in the damages claim case on the rights of the Danns and other Western Shoshones to aboriginal land. Part IV.C discusses the Danns' perspective—their view on the land and the trespass suit and their insistence on the right to live as they see fit on their tribe's aboriginal lands.

A. The "Taking" of Western Shoshone Lands

The commissioners were instructed specifically... that they were not expected to negotiate for the extinction of the Indian title. . . .

...[T]he commissioners carefully followed their instructions.404

The underlying issue in the Danns' dispute with the federal government is the ownership of the aboriginal lands of the Western Shoshones. The federal government argues that the Western Shoshones' aboriginal lands were incorporated into the United States in 1848 under the Treaty of Guadalupe-Hidalgo,405 a treaty to which the Western Shoshones were not a party.406 At the time this treaty was signed, the lands used and occupied by the Shoshones covered about eighty million acres in what are today the states of Colorado, Idaho, Nevada, Utah, and Wyoming.407 The Western Shoshones occupied about twenty-two million acres in northern and central Nevada.408

In 1862, President Lincoln sent a special commission to negotiate

404. Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335, 347 (1945) (describing the instructions given in 1862 to the commissioners sent to negotiate treaties with the Shoshones, including the Western Shoshones); see also id. at 341 ("A special commission was promptly appointed and instructed that it was not expected that the proposed treaty would extinguish Indian title to the lands . . . .").


407. See United States v. Dann, 572 F.2d 222, 224 (9th Cir. 1978) (per curiam).

408. See id.
a treaty with the Shoshones, with instructions that the commission was not to negotiate for the extinguishment of Shoshone title but rather for the security of roads through Shoshone lands. Five treaties were negotiated with different Shoshone groups, including the Treaty of Ruby Valley with the Western Shoshones (the "Treaty"), by which the Western Shoshones allowed settlers safe passage and permitted prospecting, mining, farming, and ranching on their lands. Furthermore, the Treaty "defined the boundaries of the Western Shoshone land" and provided that whenever the President deemed it expedient to provide the Western Shoshones with reservations within the land described in the Treaty, they would remove themselves to such reservations. After increasing numbers of non-Indians displaced some of the Western Shoshones, President Hayes established a reservation for them at Duck Valley in Nevada. The reservation was located outside the territory described in the Treaty, and only a minority of the Western Shoshones moved there. When the Danns' dispute with the federal government began in 1973, most of the Western Shoshones still lived

409. See id.

410. Treaty with Western Bands of Shoshonee Indians, Oct. 1, 1863, U.S.-Western Bands of Shoshone Indians, 18 Stat. 689 (1875) [hereinafter Treaty of Ruby Valley]; see Dann, 572 F.2d at 224 (referring to treaty as "Treaty of Ruby Valley"). The Treaty was signed on October 1, 1863, and ratified in amended form on October 21, 1869. See id. (citing Treaty of Ruby Valley, supra); see also FRANCIS PAUL PRUCHA, AMERICAN INDIAN TREATIES: THE HISTORY OF A POLITICAL ANOMALY 277 (1994) (describing U.S. treaties with the Shoshones).

411. See Dann, 572 F.2d at 224. Article IV of the Treaty provided that "the Shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use ... ." Treaty of Ruby Valley, supra note 410, 18 Stat. at 689-90; see also Dann, 706 F.2d at 930 (quoting the Treaty).

412. Dann, 572 F.2d at 224. Under Article VI of the Treaty, the Western Shoshones agreed as follows:

[W]henever the President of the United States shall deem it expedient for them to abandon the roaming life, which they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

Treaty of Ruby Valley, supra note 410, 18 Stat. at 690; see also Dann, 706 F.2d at 930 (quoting the Treaty).

413. See Dann, 572 F.2d at 224. The reservation was established by Executive Order 05-4, dated April 16, 1877. See Dann, 706 F.2d at 930 (citing 1 CHARLES J. KAPPLER, INDIAN AFFAIRS: LAWS AND TREATIES 866 (2d ed. 1904)).

414. See Dann, 572 F.2d at 224.
within the territory described in the Treaty.\textsuperscript{415} Thus, the Western Shoshones’ land had not been “taken,” in the usual sense of the word, from them by the United States.

In 1951, several Shoshone groups—including the Temoak Band, a small band who claimed to represent the Western Shoshones—brought an action before the Indian Claims Commission (the “Commission”) seeking “damages for the deprivation of their former tribal lands.”\textsuperscript{416} The complaint alleged that the United States had violated the Western Shoshones’ rights and the Treaty of Ruby Valley by conveying a large part of the land described in the Treaty to settlers, or by converting the land to its own use, without compensation.\textsuperscript{417} In 1962, the Commission concluded that the Western Shoshones had enjoyed exclusive use and occupation of, and hence had aboriginal title to, twenty-two million acres of land in Nevada and that the United States, without paying compensation, had treated the lands as public lands.\textsuperscript{418} In 1972, the Commission set the value of the land as of July 1, 1872, the date that the parties stipulated as the date of taking.\textsuperscript{419}

In 1974, the Danns (who did not belong to the Temoak Band)\textsuperscript{420} and other Western Shoshones tried to intervene in the claims proceeding to remove certain lands from the complaint “on the grounds that the Western Shoshones still had unextinguished aboriginal title” to them;\textsuperscript{421} the Commission, however, rejected their petition.\textsuperscript{422} In 1977, the Commission, continuing to ignore evidence

\begin{footnotes}
\item[415] See id.
\item[417] See Dann, 572 F.2d at 224-25 (quoting Western Shoshone Identifiable Group, Represented by the Temoak Bands of Western Shoshone Indians, Nevada, 35 U.S. Indian Claims Comm’n Dec. 457, 461-62 (1975)).
\item[418] See id. at 225.
\item[419] See id.
\item[420] The Dann sisters are members of the Dann Band, a self-sufficient, autonomous band within the Western Shoshone Nation. See Brief of Respondents at 1, United States v. Dann, 470 U.S. 39 (1985) (No. 83-1476).
\item[422] See Dann, 572 F.2d at 225. The Court of Claims affirmed the Commission’s decision to reject the intervention petition. See Western Shoshone Legal Defense & Educ. Ass’n v. United States, 531 F.2d 495, 504 (Ct. Cl. 1976). The court noted that the
\end{footnotes}
of strong Western Shoshone opposition to the Temoak Band’s claim,\textsuperscript{423} issued its final damages award,\textsuperscript{424} which the Court of Claims affirmed in 1979.\textsuperscript{425} Thus, the federal courts recognized the United States’s power to take the Western Shoshones’ lands from them without their consent, as the Court in \textit{Johnson} had allowed,\textsuperscript{426} while ignoring continued Western Shoshone occupation of the lands.

\textbf{B. The Government’s Perspective: The Danns as Trespassers}

Thus two decades of legal battle came to their culmination. The federal government versus the Western Shoshone boiled down to [a U.S. Bureau of Land Management agent] twisting Carrie Dann’s arm.\textsuperscript{427}

In 1974, the federal government filed a trespass action against Carrie and Mary Dann, alleging that they had violated the Taylor Grazing Act\textsuperscript{428} by grazing their livestock without a federal permit on land the government claimed was public land.\textsuperscript{429} Prior to 1974, the Danns’ possession of the land was unchallenged.\textsuperscript{430} In their defense,
the Danns argued that they and the other Western Shoshones retained aboriginal title to the land in question,\textsuperscript{431} and thus they could not be guilty of trespass. The federal district court in Nevada granted the government's motion for summary judgment, holding that the Danns were collaterally estopped from asserting title to the land because of the Commission's ruling in the Temoak Band's claim proceeding that the United States had acquired the land.\textsuperscript{432} The Danns were thus saddled with a decision reached in a case brought by one small Western Shoshone group, a case in which they were denied participation and thus were denied the right to have their interests represented.\textsuperscript{433} Moreover, the lands at issue were not even under the geographical jurisdiction of the Temoak Band.\textsuperscript{434}

In 1978, the Ninth Circuit reversed the district court's decision,\textsuperscript{435} holding that the Commission's decision did not foreclose the Danns from litigating the issue of the Western Shoshones' title to the land\textsuperscript{436} because the title issue was neither litigated nor decided in the Commission proceedings, which only examined whether the Western Shoshones \textit{ever} had title to the land and not whether the United States had later gained title.\textsuperscript{437} The court remanded the case for a determination of whether the Western Shoshones still had title.\textsuperscript{438}

In 1979, before the district court hearing the Danns' case on remand reached a decision, the Court of Claims affirmed the Commission's award in the Temoak Band's damages claim.\textsuperscript{439} The award was then certified to the General Accounting Office.\textsuperscript{440} The decision in the Dann case apparently was delayed, at the government's behest, to await the expected preclusive effect of the

\begin{itemize}
\item[431.] \textit{See Dann}, 572 F.2d at 223.
\item[432.] \textit{See id.} The district court issued an injunction against further unauthorized grazing and assessed the Danns $500 in damages. \textit{See id.}
\item[433.] \textit{See supra} notes 420-22 and accompanying text (describing the Danns' unsuccessful attempt to intervene in the Commission proceeding). The due process implications of this denial of participation were explored in the Danns' brief to the Supreme Court. \textit{See Brief of Respondents at 2, Dann} (No. 83-1476).
\item[434.] \textit{See Brief of Respondents at 1-2, Dann} (No. 83-1476).
\item[435.] \textit{See Dann}, 572 F.2d at 227.
\item[436.] \textit{See id.} at 223.
\item[437.] \textit{See id.} at 226. The court explained that claims before the Commission proceeded in three steps: (1) a decision whether the claimants \textit{ever} had title to the land in question; (2) establishment of the value of the land as of the time of taking; and (3) determination of any offsets against the claimants by the government. \textit{See id.}
\item[438.] \textit{See id.} at 223.
\item[439.] \textit{See Temoak Band of Western Shoshone Indians v. United States}, 593 F.2d 994, 1002 (Ct. Cl. 1979).
\item[440.] \textit{See Dann}, 706 F.2d at 923.
\end{itemize}
Following the certification, the district court held that upon certification, the award had been automatically "paid," and its effect was to extinguish aboriginal title to the Western Shoshone lands.

On appeal, the Ninth Circuit reversed, holding once again that the Danns were not barred from asserting aboriginal title as a defense to the trespass suit because the issue of extinguishment of title was never litigated in the Temoak Band's claims proceeding. Moreover, the court held that the Danns were not precluded from asserting aboriginal title by the bar provision of the Indian Claims Commission Act because the government had not yet made payment on the damage award. Although funds allegedly had been credited to a Treasury account in the Western Shoshones' name, no money had actually passed into the hands of the Western Shoshones or been used for their benefit. Finally, the court held that aboriginal title had not been extinguished as a matter of law, reasoning that although extinguishment could be accomplished in a number of ways, the government's intent to extinguish must be clear and no government action demonstrated such intent.

441. See Brief of Respondents at 8-9, Dann (No. 83-1476).
442. See Dann, 706 F.2d at 923. The court enjoined further trespasses by the Danns but denied damages for trespasses prior to certification of the award. See id. Both sides appealed. See id.
443. See id.
444. See Dann, 706 F.2d at 923-24.
446. See Dann, 706 F.2d at 925. The court reasoned that the bar provision took effect only upon payment of the claim. See id. The court also held that no additional bar could arise from common law res judicata doctrine. See id.
447. See id. at 925-26. Distribution of claims awards could only take place after Congress acquiesced to a plan of use or distribution prepared in a timely manner by the Secretary of the Interior or enacted by separate legislation. See id. at 926 (citing 25 U.S.C. §§ 1401-1407 (1994)). Because no timely plan was submitted for the Shoshone award, separate legislation was required. See id.
448. See id. at 933.
449. See id. at 928. The court stated that "[e]xtinguishment may be accomplished 'by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise.'... The intent must be clear, however; 'an extinguishment cannot be lightly implied.'" Id. (quoting United States v. Santa Fe Pac. R.R., 314 U.S. 339, 347, 354 (1941)). Moreover, extinguishment could occur only as a result of action by Congress or action by the executive branch in which Congress acquiesced. See id. at 928-29.
450. The government had argued that a number of actions by the United States caused
In 1985, the U.S. Supreme Court addressed the question of whether "payment" of the Temoak Band's damages award had occurred when funds were appropriated for the Western Shoshones' benefit.\textsuperscript{451} In an opinion that Dean Nell Newton has aptly described as "dry-as-dust,"\textsuperscript{452} the Court concluded that payment had been made to the Western Shoshones once money was deposited into a trust account for the tribe's benefit,\textsuperscript{453} even though the tribe did not have access to the money and could not have access to it in the absence of congressional action.\textsuperscript{454} The Court declined to focus on the Western Shoshones' lack of access or on the fact that the government had simply transferred money within its own accounts; instead, the Court blamed the tribe itself for the Secretary of the Interior's failure to submit a plan for distribution of the award.\textsuperscript{455}

Although the Court cited Johnson v. McIntosh as a source of the extinguishment: the application of the public land laws, including the homestead laws, to Western Shoshone aboriginal lands; the creation of the Duck Valley Reservation; and the administration of the lands at issue under the Taylor Grazing Act. See id. at 928. The court rejected all of these arguments. See id. at 929 (rejecting application of homestead laws argument); id. at 931 (rejecting establishment of the reservation argument); id. at 932 (rejecting Taylor Grazing Act argument). The court remanded for consideration of how long aboriginal title had been preserved and whether the Danns were entitled to share in it. See id. at 933. The court noted that the government had previously admitted the existence of aboriginal title and that the issue to be decided was whether it had survived to the date of trial. See id. at 933 n.10.

\textsuperscript{451} See United States v. Dann, 470 U.S. 39, 40-41, 44 (1985). The United States had petitioned for a writ of certiorari, which the Court granted. See United States v. Dann, 467 U.S. 1214 (1984) (mem.). By the time the Court heard the case, the original $26 million claims award fund had grown to $43 million. See Dann, 470 U.S. at 42-43.


\textsuperscript{453} See Dann, 470 U.S. at 44-45, 50. According to the Danns' attorneys, the funds were actually placed in an account for the Temoak Band (rather than for the Western Shoshones as a whole). See Brief of Respondents at 7 n.2, Dann (No. 83-1476).

\textsuperscript{454} See supra note 447 (explaining the need for congressional action).

\textsuperscript{455} The Court seemed impatient with the tribe's refusal to cooperate in drafting a plan. See Dann, 470 U.S. at 42-43. The lack of cooperation was due to massive Western Shoshone opposition to acceptance of the award. See Brief of Respondents at 6, Dann (No. 83-1476); see also supra note 422 (discussing why the Temoak Band originally sought a damages award rather than to quiet title).
aboriginal title doctrine, the Court did not base its decision on property law principles. Rather, the Court focused on its interpretation of the legislative intent of the Indian Claims Commission Act, which it identified as disposing of "the Indian claims problem with finality," and transferring the responsibility for deciding the merits of Indian claims from Congress to the Commission. The Court reasoned that to hold that payment had not occurred until Congress had approved a distribution plan would frustrate both of these purposes by postponing the effects of the statutory provision discharging the United States from further liability and by failing to relieve Congress of the "burden" of having to resolve Indian claims. By focusing on the inconvenience which the claim created for the United States and Congress, the Court ignored the fundamental role that the Act was meant to play in providing redress to tribes who had been deprived of their rights to land.

The Court's holding on the payment issue effectively barred the Danns from raising tribal aboriginal title as a defense to the trespass action. The Court suggested, however, that the Danns might be able to offer a defense of individual aboriginal title, an issue that had not been before the Commission in the Temoak Band's proceeding, and remanded the case for consideration of this issue.

456. See Dann, 470 U.S. at 41 n.3.
457. Id. at 45 (quoting H.R. REP. NO. 79-1466, at 10 (1945)).
458. See id.
459. See id. at 45, 47.
460. See id. at 47. The Court bolstered its conclusion with an analysis of the meaning of "payment" under trust law. The Court assumed that Congress intended to adopt "the accepted legal uses of the word 'payment.'" Id. "Payment" could be held to have been made even when the creditor had not received actual possession of the funds, as long as funds were transferred from the payor to an agent or trustee of the beneficiary, and it would be "of no consequence that the creditor refuses to accept the funds from the agent or the agent misappropriates the funds." Id. at 48. The Court claimed that these principles implicitly had been applied to the relationship between the United States and an Indian tribe in Seminole Nation v. United States, 316 U.S. 286 (1942), in which the Court held that the United States had satisfied its treaty obligation to pay annuities to individual tribal members by transferring the money to the Seminole General Council, which had misappropriated the money, as long as the government officials did not know the Council was defrauding tribal members. See id. at 296; Dann, 470 U.S. at 48-49 (citing Seminole Nation). The Court acknowledged that in the Western Shoshone case the government had simply transferred money from one government account to another, rather than actually transferring money to a tribal entity as in Seminole Nation, but the Court apparently saw no reason for a different outcome. See Dann, 470 U.S. at 48-50.
461. See Newton, supra note 416, at 771 (explaining that the Act was designed to give Indians the opportunity to sue for historic wrongs).
462. See Dann, 470 U.S. at 50. The Ninth Circuit in turn remanded the case to the
On remand, the district court found that the Danns had individual aboriginal title to one section of grazing land prior to 1979, the year in which the claims award became final. Moreover, the court found that both the Danns and their father, Dewey Dann, had individual aboriginal rights to graze certain types and numbers of livestock, free of regulation by the Bureau of Land Management.

On appeal, the Ninth Circuit explored the concept of individual aboriginal title, which it noted “is by no means a well-defined concept,” and acknowledged that “[t]he common view of aboriginal title is that it is held by tribes.” Nonetheless, the court reasoned that an individual could in theory establish aboriginal title by showing “that his or her lineal ancestors held and occupied, as individuals, a particular tract of land, to the exclusion of all others, from time immemorial, and that this title had never been extinguished.” The court did not address the issue further, however, because the Danns had not made an individual claim to the lands from time immemorial, but rather had asserted only tribal interests.

The court also discussed another possible meaning of aboriginal title stemming from a 1923 case, Cramer v. United States, in which the Supreme Court held that three Indians who had settled on public

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district court for proceedings on the individual aboriginal title issue. See United States v. Dann, 763 F.2d 379, 379 (9th Cir. 1985).

463. See United States v. Dann, 873 F.2d 1189, 1194 (9th Cir. 1989). The court ruled that the Western Shoshones' aboriginal title had not been extinguished prior to 1979. See id. at 1193.

464. See id. at 1193.

465. See id. at 1194. Specifically, the court described the Dann family's aboriginal grazing rights as follows:

Dewey Dann had established aboriginal individual rights to graze 170 head of cattle, plus calves, and 10 head of horses, plus foals, and ... Mary and Carrie Dann had established individual aboriginal rights to graze 598 head of cattle, plus calves, and 840 head of horses, plus foals, all such grazing rights to be held in common with permittees of the Bureau of Land Management on the lands in dispute.

Id. Both sides appealed. See id.

466. Id. at 1195. Prior to discussing the individual aboriginal title issue, the court rejected the Danns' attempts to continue to rely on tribal aboriginal title as a defense. See id. at 1194-95.

467. Id. at 1196.

468. See id. In their appellate brief to the Ninth Circuit, the Danns asserted the tribal interests of the Western Shoshone Nation or the Dann Band of the Western Shoshones. See id. The court explained further that the aboriginal rights to the lands were tribal until they were extinguished and "paid" for pursuant to the Indian Claims Commission Act; the remnants of the tribal title could not thereafter survive in individual tribal members. See id.

469. 261 U.S. 219 (1923).
land that was subsequently granted to a railroad were entitled to the land that they had actually enclosed and occupied.\textsuperscript{470} The \textit{Cramer} Court based its decision on the government policy of respecting Indian occupancy rights, whether tribal or individual, that complemented the civilization policy.\textsuperscript{471} Applying the \textit{Cramer} doctrine, the Ninth Circuit held that the Danns acquired individual aboriginal \textit{title} to the land to which they or their lineal ancestors had actual possession prior to November 26, 1934,\textsuperscript{472} when the President withdrew public lands in Nevada from settlement pursuant to the Taylor Grazing Act.\textsuperscript{473} The court also held that the Danns had limited individual aboriginal \textit{grazing rights} to graze horses and cattle in common with others on certain public lands.\textsuperscript{474} Finally, the court held that the Danns' individual aboriginal grazing rights were subject

\textsuperscript{470} See id. at 224-25, 234.

\textsuperscript{471} See id. at 227 (noting that "such occupancy being of a fixed character lends support to another well understood policy, namely, that of inducing the Indian to forsake his wandering habits and adopt those of civilized life"). Holding that Indians acquired no possessory rights upon settlement, the \textit{Cramer} Court explained, "would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation." Id. at 229.

\textsuperscript{472} See Dann, 873 F.2d at 1199. The Ninth Circuit stated that the Danns acquired their title to the land "by occupancy, inclosure, or other actions establishing a right to the lands to the exclusion of adverse claimants." Id. The Danns' ranch was located on land that their parents had acquired by obtaining a homestead patent in the 1930s (or possibly 1928) and by later buying one section of land from a railroad. See id. at 1193 & n.2.

\textsuperscript{473} See id. at 1198 (citing Exec. Order No. 6910, 3 C.F.R. § 141 (1938)). The Taylor Grazing Act, 43 U.S.C. §§ 315-315r (1994), which was enacted in 1934, authorized the establishment of grazing districts that in effect withdrew public lands from settlement. See 43 U.S.C. § 315; Dann, 873 F.2d at 1198. The court interpreted the rights recognized in \textit{Cramer} as being based on implied government consent to Indian occupation of public lands; this consent ended with the enactment of the Taylor Grazing Act. See id. The court also held that tribal aboriginal rights to the land in question had been extinguished in 1872, the year used for valuation in the claims proceeding, rather than in 1979. See id. The district court had found that tribal aboriginal title was extinguished in 1979, when the claims award was "paid." See id. The Ninth Circuit disagreed on the grounds that the Commission had no jurisdiction to extinguish title, but rather only had jurisdiction to award damages for takings that occurred on or before August 13, 1946, and thus extinguishment could have occurred no later than that date. See id. The Commission had not determined a date for extinguishment, holding only that title had been extinguished in the latter part of the nineteenth century. See id.

\textsuperscript{474} See id. at 1199. Such rights must have been acquired by the Danns' lineal ancestors prior to the time that the lands were subjected to the Taylor Grazing Act and must have been continuously exercised since. See id. at 1199-200. The court reasoned that although \textit{Cramer} did not address use rights, it recognized "a national policy of encouraging Indians to adopt domestic pursuits" and thus the \textit{Cramer} rule was "not inconsistent with recognition of a grazing right in individual Indians, acquired prior to ... the Taylor Grazing Act." Id. at 1199. The Danns had taken over their parents' livestock operation, and Mary Dann had also started her own operation in the 1940s, which Carrie Dann had joined in the 1950s. See id. at 1193.
to Bureau of Land Management regulation “that is shown to be essential to the conservation of the common resources.”

Thus, after a sixteen-year odyssey through the federal court system, the Danns’ claim of continued Western Shoshone aboriginal title as a defense to the trespass action was rejected on the basis of a proceeding brought by a group to which they did not belong, in which they were denied the right to participate, and which resulted in a monetary award that their tribe had never actually received. Their perspective on the nature of land and land ownership was deemed not worthy of consideration by federal court judges whose understanding of land use and Indian land ownership was shaped by the attitudes and legal principles underlying Johnson and the Dawes Act. The federal courts thus imposed on the Danns as individuals a property rights regime that included the principles of individual, as opposed to communal, ownership of land and of government power to take Indian land by purchase or by conquest—the same regime that the federal government had sought to impose on Indian tribes since Johnson was decided. Once again, Indian women’s property rights were subordinated to the federal government’s claims and interests. The Danns were left with legal recognition of limited individual aboriginal rights, subject in part to federal regulation. The Danns petitioned the Supreme Court for writ of certiorari, which the Court denied in October 1989, thus ending the Danns’ quest for recognition by the U.S. legal system of their rights with respect to Western Shoshone aboriginal land. As far as the land at issue and the Danns’ rights in it were concerned, the conquest anticipated by Johnson was complete.

C. The Danns’ Perspective: Defending Their Mother

“We will not stop fighting. . . . This land is our mother.”

Much of the federal courts’ analyses in the trespass suit against

475. Id. at 1200. Because the district court had focused on the status of the Danns’ claims in 1979 rather than in 1934, the Ninth Circuit remanded for the making of the requisite findings. See id.


the Danns focused on procedure. By focusing on procedural issues like the collateral estoppel effect of the Temoak Band's Indian Claims Commission proceeding, the Supreme Court avoided focusing directly on what mattered most to the Danns—the land itself and the way that the Danns, like their ancestors, shaped their lives on that land. Indeed, for the Danns, what was at stake was their life: As Carrie Dann has said, "'Land is the root of all things we need in life. Land is life.'" Also at stake was the health and well-being of the Danns' family—not only the Danns' extended human family living on the land, but also their "four-legged brothers and sisters" and the earth itself, which they regard as their mother.

The life that the Danns lead is clearly at odds with what nineteenth- and early twentieth-century federal government officials intended for Indians, and for Indian women in particular. Moreover, the Danns' attitudes toward the land on which they live imply a rejection of the major tenets of the property rights regime that the federal government attempted to impose on the Shoshones and other tribes in Johnson v. McIntosh and in the allotment program. In short, the Danns stand as defiant living examples of continuing Indian resistance to loss of property rights and assimilation and of Indian women's refusal to conform silently to the gender role that the Dawes Act and the field matron program intended for them.

If any of the field matrons were able to observe the Danns today, undoubtedly they would view the Danns as evidence of the failure of their efforts to domesticate Indian women. Neither of the Dann sisters is the field matrons' model farm wife, who confines her labor to indoor domestic pursuits while leaving the arduous outdoor work to her farmer husband. Nor are the Danns "squaw drudges," the downtrodden victims of the indolence of Indian men that existed in government officials' imaginations. Rather, they make their own living off the land, as they have done for decades and as their parents

480. About a dozen members of the Dann family reside on the Dann ranch, including the Dann sisters, their brother Clifford, and children and grandchildren of the three siblings. See id.
481. Id.
482. See Stevens, supra note 3.
483. See supra notes 323, 346-48 and accompanying text (describing the field matrons' efforts to focus Indian women's labor on the house while leaving outdoor labor to Indian men).
484. See supra notes 272-73 and accompanying text (describing the image of the squaw drudge).
and other ancestors did before them. In doing so, they carry on the tradition of Indian women's involvement in agricultural activities and their direct relationship with the land that the Supreme Court ignored in Johnson and that nineteenth-century government officials sought to destroy.

More importantly, the Danns' use of the land does not fit the model laid out by the federal government officials who endeavored to turn the Indians into farmers. Instead of growing crops in large, neatly fenced fields, the Danns and their family raise livestock. They also gather firewood, pine-nuts, and plants and herbs for food and medicinal purposes. They fish, hunt, and garden. It is not an easy way of life, but it is so fundamental to their existence that they continue to struggle, against seemingly overwhelming odds, to preserve it.

The Danns' family structure is also contrary to the goals of the assimilationists. The architects of the allotment and field matron programs viewed the establishment of the nuclear family as a key component in the civilization of the Indians. Extended families, and the sense of obligation to others that they created, were viewed as an impediment to Indian social and economic development. The Danns do not fit the field matrons' model of a husband and wife living together with their minor children. Instead, about a dozen members of the Dann family, including the Dann sisters themselves, their brother, and the three Dann siblings' children and grandchildren, live and work together on the Dann ranch.

The Dann sisters' divergence from the familial role that the government sought to impose on Indian women accompanies their rejection of the passive role within the tribe that the government intended for Indian women. Historically, the federal government

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485. See supra notes 54-69 and accompanying text (discussing the Supreme Court's failure to acknowledge Indian agricultural activities).
486. See supra notes 269-74, 310-18 and accompanying text (discussing efforts to transform Indian men into crop farmers and to confine Indian women's labor to the domestic sphere).
487. See supra notes 269-80 and accompanying text (discussing the government's efforts to turn Indian men into farmers). Even on reservations with land that was suitable only for livestock raising, the government promoted crop raising as the preferred form of agricultural activity for Indian men. See supra note 271 and accompanying text.
488. See Brief of Respondents at 1, Dann (No. 83-1476).
490. See supra notes 284-89 and accompanying text (discussing government officials' preference for the nuclear family).
491. See supra note 480 (listing the residents of the Dann ranch).
preferred dealing with the men of each tribe. Treaties generally were negotiated with and signed by men. The Treaty of Ruby Valley, for example, provided that the Western Shoshones were represented by their chiefs and "Principal Men." Men also received preferential treatment in the allotment program. Agricultural tools, supplies, and training, to the extent that the government made them available, were given to men. In short, the government expected that Indian men would enjoy the same status as political and economic leaders within their communities that white men enjoyed within Euro-American society. The Danns, however, have defended their right to do "men's work" and have refused to depend on male tribal leaders to represent their interests in dealings with the federal government. Carrie Dann has commented that "'[u]nlike Christians, we [Shoshones] see women in a strong role... It is wrong to put women down. We can think and work, and we can fight the stupidity of men.'" The Danns have insisted on the right to tell their own story and fight their own fight in a manner that has earned them international recognition.

The Danns' attitude toward, and basic understanding of, the land on which they make their living also shows their continued resistance to assimilation into Euro-American society and their rejection of its view of land and land ownership. Their understanding of the land and rights in the land is fundamentally at odds with the view that the federal government has sought to instill in Indians and that underlay Johnson, the allotment program, and the federal courts' decisions in the trespass case against the Danns. They refuse to view the land as just a commodity to sell to the highest bidder. Thus, while they might agree with the Johnson Court's holding that Indians cannot freely sell absolute rights to land, they presumably would extend this principle to all people: As Carrie Dann has commented, "'You can't sell the earth and that's my background.'" For the Danns, the land does

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492. See, e.g., PRUCHA, supra note 410, at 210-13 (describing the Indian negotiators of treaties); see also Perdue, Trail of Tears, supra note 63, at 16-20 (describing the declining role of Cherokee women in treaty negotiations and land transactions).

493. Treaty of Ruby Valley, supra note 410, 18 Stat. at 691; see supra notes 410-12 and accompanying text (discussing the Treaty).

494. See supra notes 221, 282-83 and accompanying text (discussing the recipients of allotments).

495. See supra notes 275-80 and accompanying text (discussing the provision of agricultural tools, supplies, and training to Indian men).

496. Taylor, supra note 489, at 3 (quoting Carrie Dann) (alteration in original).

497. See infra notes 516, 518-19 and accompanying text (describing the international recognition that the Danns have received).

498. The Invisible People, supra note 10 (quoting Carrie Dann); see also Stevens, supra
not have a price tag. To believe that it did would be to deny their own identity. As Carrie Dann has explained: "'I wouldn't take a million dollars per acre [for Western Shoshone land].... If I did, I would be selling my pride, my honor, my dignity, my birthright, everything that says I'm a Western Shoshone.'" \(^{499}\)

The Danns implicitly reject the idea, which was fundamental to the allotment program, that land can be cut into pieces and parceled out to individuals. The concept of individual land ownership is wholly incompatible with their understanding of the land. The Danns' fundamental objection to individual land ownership was manifested in their decision not to assert aboriginal title to a portion of the Western Shoshones' aboriginal lands as individuals, despite the federal courts' recognition that such individual title might exist.\(^{500}\) The Danns' Supreme Court brief explained that they have always considered the land they occupy to be the property of the Western Shoshones as a whole.\(^{501}\)

The Danns' rejection of the possibility of selling or dividing Western Shoshone land is intimately tied up with the role that the earth plays in their world-view. For the Danns, the earth is most properly understood as their mother. As Carrie Dann has put it, "'[T]he earth is our mother.... Only a woman can give birth, nourish life. We can't own the earth because we are from the earth. Can you own your mother when she brought life to you?'"\(^{502}\) As mother, the earth can be depended upon to nurture her children: "'Our human mother can only take care of us for so long, then as we get older we must turn to our earth mother, who will take care of us..."\(^{503}\)

\(^{499}\) Hunt, \textit{supra} note 479 (quoting Carrie Dann). The Danns' view of the land calls to mind some Indian objections to allotment. \textit{See}, e.g., \textit{supra} notes 252-54 and accompanying text.

\(^{500}\) \textit{See} Warren, \textit{supra} note 478; \textit{see also} United States v. Dann, 873 F.2d 1189, 1196 (9th Cir. 1989) (noting that the Danns disavowed any individual claims and asserted only tribal interests). According to one newspaper account, the Danns had declined to pursue these claims by establishing the nature and extent of their father's use of the land because of their belief that no individual Shoshone owned any part of the land. \textit{See} Michael Phillis, \textit{Shoshone Vow to Fight if Feds Move Their Cattle}, Gannett News Service, June 7, 1991, \textit{available in LEXIS}, News Library, GNS File; \textit{see also} SOLNIT, \textit{supra} note 11, at 173 (stating that for the Danns to have claimed individual aboriginal title "would have been to abandon the larger issues they had been fighting for, and through the end of their case in June of 1991 they refused to argue individual title"). For a discussion of the federal courts' analyses of the Danns' individual aboriginal rights, \textit{see supra} notes 469-75 and accompanying text.

\(^{501}\) \textit{See} Brief of Respondents at 1, \textit{Dann} (No. 83-1476).

\(^{502}\) Stevens, \textit{supra} note 3 (quoting Carrie Dann).
for the rest of our lives.' "503 The preservation of the earth mother is essential not only to the physical but also the spiritual survival of the Danns; as Carrie Dann has explained: "If we lose our land, we have lost our mother. We're spiritually dead. To us, it is to be reduced down to nothingness." "504

Moreover, the Danns have claimed the right to use aboriginal Western Shoshone land not just to support their human family, but also for the benefit of the animals whom they also regard as family.505 In describing the sisters' desire to decide how the land will be used, Carrie Dann said, "We'd like to see that our four-legged brothers and sisters will always have a place to live, for they are the children of the earth." "506 The Danns have already suffered the loss of many of their four-legged siblings through government seizures of their livestock.507

By reaching out to the international community for relief, the Danns have rejected the principle that only the United States, as heir to the rights of the discovering nations, can have dealings with the Western Shoshones. This avenue of relief is at odds with an aspect of the Discovery Doctrine adopted in Johnson. Under that Doctrine, the discovering nation gained the exclusive right to deal with the natives, free of interference by other nations.508 However, in the


504. Stevens, supra note 3 (quoting Carrie Dann).

505. The Danns' attitude toward the animals on their ranch reflects the traditional world view of many tribes, in which animals are not seen as wholly separate from human beings and as inferior to them. Rather, animals and humans enjoy what Joseph Epes Brown has described as a "reciprocal interrelationship," and animals, who were created before humans, can even serve as teachers and guides. JOSEPH EPES BROWN, THE SPIRITUAL LEGACY OF THE AMERICAN INDIAN 125 (1982); see id. at 124-26.

506. Hunt, supra note 479 (quoting Carrie Dann).

507. See id. (describing government roundups of livestock); see also SOLNIT, supra note 11, at 191-96 (describing an attempted roundup of the Danns' livestock on April 9, 1992). The Danns' concern for keeping land available for the needs of animals is apparently not shared by everyone in their community. The owner of the ranch adjacent to the Danns' ranch recently sold his land to a large mining company. See Hunt, supra note 479. The neighbor, Maynard Alves, has publicly expressed considerable hostility toward the Danns. In his opinion, the government "just let them do anything they want to do because it is politically correct because they are Indians." Id. The discovery of gold in the area has led to what has been described as "one of the largest gold rushes in recent years." Id.

508. See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 573 (1823); see also supra notes 39-40 and accompanying text (discussing the Johnson Court's holding on tribal relations with foreign nations).
Spring of 1997, the Western Shoshone Nation, with the Danns’ support, filed a grievance against the United States based on violations of the Treaty of Ruby Valley with the United Nations Commission on Human Rights. The grievance claim relates to the federal government’s treatment of the Western Shoshones as a conquered people, whose land was ceded to the United States. The claim asserts that the tribe’s land was taken illegally under both United States and international law. The appeal to the international community relates to the matter that is central to the Discovery Doctrine, that is, native rights in land; because of its importance, this matter, perhaps more than any other, is meant to be settled by the United States without foreign intervention.

The Danns have also brought their grievance to a regional international organization, the Organization of American States (“OAS”). In June 1997, the Danns filed a complaint with the OAS’s Inter-American Commission on Human Rights. In response to the OAS complaint, the United States has argued that “[t]his case is about disputed land ownership and grazing rights, and not about human-rights violations.” This statement implicitly rejects a connection between the denial of land rights and the denial of human rights and of the intimate ties between the land and human beings that the Danns recognize. Yet, the United Nations has acknowledged this connection. The United Nations Commission on Human Rights, prompted by the efforts of the Danns and other indigenous peoples’ activists, has agreed to begin a worldwide study of indigenous peoples’ land rights. In March 1998, the Inter-American Commission on Human Rights asked the United States to stay its actions against the Danns pending the Commission’s investigation of the case, but the United States has refused.

510. See id.
511. See id.
512. See id.
513. See Hunt, supra note 479.
514. Id. (quoting the U.S. Department of Justice’s response to the OAS).
515. See supra notes 498-504 and accompanying text (discussing the Danns’ view of the land).
516. See Hunt, supra note 479. In commenting on the Commission’s plan, Robert T. Coulter, who is representing the Danns in their OAS claim, stated that “[i]t will mean a fresh and disinterested eye will be brought to bear on longstanding items that courts in the United States have not addressed.” Id. (quoting Robert T. Coulter).
517. See Brenda Norrell, Dann’s [sic] Take Land Battle to World Court, INDIAN COUNTRY TODAY, Sept. 14-21, 1998, at A2. The State Department has asked the Bureau
This was not the first time that the Danns' struggle received recognition at the international level. In 1993, the Danns received the Right Livelihood Award, dubbed the "alternative Nobel Prize," for "their courage and perseverance in asserting the right of indigenous people to their land." The Danns also have received support in the past from the Parliament of the European Union and the German parliament.

Thus, the Dann sisters, in the face of seemingly overwhelming odds, continue to struggle to preserve their independent way of life and to defend their right to use what they regard as the land of their tribe. They continue to reject the property rights regime and gender roles that federal courts and federal government policy-makers sought to impose on Indians under the Johnson decision and the allotment and field matron programs. Undaunted by their lack of success in the U.S. legal system, the Danns have carried their resistance to, and sought assistance in, the international arena, in defiance of the Discovery Doctrine adopted in Johnson v. McIntosh.

V. CONCLUSION: THE NEED TO RESPECT OUR SISTERS' VISION

"My people were Americans for thousands of years before your people were. The question is not how you can Americanize us but how we can Americanize you.... [T]he first thing we want to teach you is that, in the American way of life, each man has respect for his brother's vision.... [F]reedom is built on my respect for my brother's vision and his respect for mine."
In 1823, in *Johnson v. McIntosh*, the U.S. Supreme Court denied Indian tribes full legal title to their land. The Court held that the United States had title to Indian land, subject to the Indians’ right of occupancy, and could take the land from its Indian occupants by purchase or by conquest. Chief Justice Marshall’s opinion for the Court depicted Indians as savages who lived an unsettled life of hunting and fighting, who recognized only communal rights with respect to land, and who could not survive in the vicinity of farmers. The Court ignored Indian women and their relationship with the land and failed to recognize that for centuries, many tribes had engaged in agriculture, for which women were largely responsible and which provided the basis for their enjoyment of certain individual property rights in land. Later in the nineteenth century, federal government officials acknowledged Indian women’s traditional agricultural role but interpreted it as evidence of Indians’ uncivilized way of life. The government sought to assimilate Indians into the Euro-American way of life, including acceptance of the concept of individual ownership of land. Tribal land was allotted to individual Indians, with a preference for Indian men, who were to become farmers. Indian women’s traditional role in tribal agriculture was to be suppressed, and, under the guidance of field matrons, Indian women were to be domesticated—rescued from a savage life in order to take their proper place in the domestic sphere, where they would be dependent on men for their livelihood.

For over two decades, Western Shoshone ranchers Carrie and Mary Dann have resisted the twentieth-century legacy of *Johnson v. McIntosh*, the allotment program, and government efforts to assimilate and domesticate Indian women. They have fought for legal recognition of their right to graze livestock on land on which the Western Shoshones have lived from time immemorial, but which the federal government claims as public domain land. Federal courts have rejected their claim that the land in question, which was never formally taken by the federal government and which continues to be inhabited by Western Shoshones, still belongs to the tribe. Despite people’s vision, see generally Robert A. Williams, Jr., *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man’s Indian Jurisprudence*, 1986 Wis. L. Rev. 219.

521. See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 579, 586-87 (1823); supra notes 31-36 and accompanying text.

522. See Johnson, 21 U.S. (8 Wheat.) at 590-91; supra notes 45-50 and accompanying text.
the federal courts' decisions, the Danns continue to deny that land is just a commodity that can be owned by the government or individuals, thus rejecting a fundamental premise of Johnson and the allotment program. They have persisted in their resistance to government efforts to restrict grazing of their livestock and have also opposed government-approved mining and nuclear weapons testing near their ranch. Their avenues of relief in the federal courts seemingly exhausted, the Danns have recently turned to the international community for assistance in vindicating their own rights and those of the rest of their tribe. They also continue to reject the role of submissive, dependent women and the nuclear-family-dominated lifestyle that the field matron program sought to impose on Indian women in the nineteenth and early twentieth centuries and insist on the right to live with their extended family and make their living as they see fit.

At its core, the federal government's prosecution of the Danns for trespass on Western Shoshone aboriginal lands can be understood as a late twentieth-century manifestation of the federal government's longstanding efforts to impose upon Indians, both explicitly and implicitly, a Euro-American vision of land, property rights, and gender roles. The Danns' resistance illustrates their insistence on the right to follow a competing vision. The federal court system's ultimate rejection of their claimed defense exemplifies the continuing refusal of federal Indian law jurisprudence to respect and accommodate the vision of the aboriginal peoples of the United States.

At the same time, federal government policy purports to support tribal self-governance, self-determination, and economic development.\footnote{523. For example, in the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (1975) (codified as amended at 25 U.S.C. § 450a (1994)), Congress declared "its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy." Id. § 3, 88 Stat. at 2204; see also Government-to-Government Relations with Native American Governments, 59 Fed. Reg. 22,951 (1994), reprinted in 25 U.S.C. § 450 (Supp. 1998) (stating the President's commitment to "building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments").} Unless federal government policy-makers and federal court judges come to grips with the oppressive history of federal government policy toward Indian lands and Indian people, it is difficult to imagine, however, that concepts like self-governance and self-determination can have any real meaning for Indians today.
when such important issues as land use and property rights are at stake. Those who create, interpret, and apply U.S. law on Indian rights seemingly have yet to learn that true freedom for all peoples is ultimately built on "my respect for my brother's vision and his respect for mine." 524

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524. Williams, supra note 520, at 299.